DOCUMENT RESUME

ED 103 716 CE 003 360

TITLE The Public Defender Service of the District of Columbia: Volume II: Training Materials.
INSTITUTION National Inst. of Law Enforcement and Criminal Justice (Dept. of Justice/LEAA), Washington, D.C.
PUB DATE [72]
NOTE 269p.; See CE 003 162 for Volume One, Policies and Procedures

EDRS PRICE MF-$0.76 HC-$13.32 PLUS POSTAGE
DESCRIPTORS *Demonstration Projects; Disadvantaged Groups; Law Instruction; *Lawyers; *Leaders Guides; Legal Aid; *Legal Aid Projects; *Professional Training; Program Guides; Service Education; Services; Social Services

ABSTRACT

The training package is designed to assist public defender agencies in developing an in-house capability for training new staff attorneys. The materials contained in the package were developed by the Public Defender Service of the District of Columbia, a program designated by the Law Enforcement Assistance Administration as an "Exemplary Project." Following an overview of each of the components of the training system for the D. C. Public Defender Service, Section Three provides all the materials necessary to conduct the initial training program for new attorneys. Section Four contains materials for a jury practice course which can be implemented subsequent to the initial training program. The syllabus and curriculum presented in this volume are designed for use by a defender agency's Training Director. It is the authors' belief that, in its present format, the package could not be distributed to trainees for self-instruction. Supplementary policy and procedure memoranda, geared to the D. C. program, are appended; with appropriate modification the materials will provide useful background for the training case materials. (Author/AJ)

ED103716

THE D.C. PUBLIC DEFENDER SERVICE

VOLUME II
Training Materials

CE

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

An Exemplary Project

CE003360

U. S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE

NILE & CJ

2

ED103716

AN EXEMPLARY PROJECT

THE PUBLIC DEFENDER SERVICE OF THE DISTRICT OF COLUMBIA

Volume II: Training Materials

U.S. Department of Justice
Law Enforcement Assistance Administration
National Institute of Law Enforcement and Criminal Justice
Washington, D. C.

Prepared for the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U. S. Department of Justice, under Contract number J-LEAA-014-74. Points of view or opinions stated in this document are those of the author and do not necessarily represent the official position or policies of the U. S. Department of Justice.

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

Richard W. Velde, *Administrator*
Charles R. Work, *Deputy Administrator*

NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE

Gerald M. Caplan, *Director*

JAN 16 1975

FOREWORD

The Public Defender Service of the District of Columbia has been designated by LEAA as an "Exemplary Project" which other communities may consider for replication in establishing legal services for the poor.

A key element in the success of the Washington, D. C., Public Defender program is training. All PDS attorneys receive a comprehensive six-week training course, described in this report, which ensures development of effective trial skills and adherence to overall program goals and standards.

This training manual is intended to be used in conjunction with a companion volume, "The Public Defender Service of the District of Columbia: Volume I, Policies and Procedures." Together they can serve as a "how-to-do-it" guide for those concerned with fashioning effective legal defense services for the indigent.

CHARLES R. WORK
Deputy Administrator
Law Enforcement Assistance
Administration

For further information concerning the policies and procedures of the D. C. PDS contact:

Secretary to the Director
Public Defender Service for the
District of Columbia
601 Indiana Avenue, N. W.
Washington, D. C. 20004
(202) 628–1200

TABLE OF CONTENTS

		Page
1.	INTRODUCTION	1
2.	OVERVIEW OF THE PDS TRAINING SYSTEMS	2
	2.1 Initial Training Program for New Attorneys	2
	2.2 One-on-One Supervision and Entry Level Practice	4
	2.3 Bi-Weekly Staff Meetings	5
	2.4 Study Groups	5
	2.5 Training Manual - Central File	6
	2.6 New Developments Circulation	7
	2.7 PDS Bulletin and Criminal Practice Institute	7
3.	TRAINING OF NEW STAFF ATTORNEYS	9
	3.1 Introduction	9
	3.2 Using the Training Case Materials	9
	3.3 Special Training Notes	15
	3.4 The Training Case: *State v. Chismo*	16
	Overview of Week I	17
	Overview of Week II	35
	Overview of Week III	53
	Overview of Week IV	63
	Overview of Week V	92
	Overview of Week VI	99
	3.5 Trainee Assignment Materials	105
	3.6 Back-Up Materials	153
	3.7 Guide to Procedures	187
4.	JURY PRACTICE COURSE	189
APPENDICES		
APPENDIX A:	Guide to Procedure - Superior Court, Criminal Division	205–A
APPENDIX B:	Fact Investigation	231–A
APPENDIX C:	Policies and Procedures in Regard to Investigation of Criminal and Juvenile Cases	245–A
APPENDIX D:	Care and Management of the Deliberating Jury	263–A
APPENDIX E:	The Use of Role-Play as a Training Technique	273–A

GOT A MOMENT?

We'd like to know what you think of this document.

The last page of this publication is a questionnaire.

Will you take a few moments to complete it?
The postage is prepaid.

Your answers will help us provide you with more useful Exemplary Project Documentation Materials.

MATERIALS

	Page
EXERCISE MATERIALS (Presented in Section 3.4 by the day on which the materials are distributed)	
Bail Agency Report	21
Report of Crime Against Person or Property	23
Suggested Defendant Interview Memo	26
Sosnick Liquor Materials (Affidavit and Offense Report)	31
Investigative Report re: Janice Martin	40
Defendant Statement	43
FBI Crime Lab Report	45
Medical Report on Victims of Sex Offenses	48
Prosecution Report	50
Miranda Warning Form	58
Investigative Report re: Officer Mullen	62
Hypotheticals for Motion for Judgement of Acquittal	67
Memorandum re: Competency (sample)	71
Janice Martin Statement	76
Notes by Officer Corcoran	79
Investigative Report re: Jack Hammer	82
Memo re: Chismo's Accomplice (Seidel)	85
Bob Seidel Materials (Statement, Indictment and Affidavit)	86
TRAINEE ASSIGNMENT MATERIALS (Presented in Section 3.5 for distribution as a package at the beginning of the course)	
Assignment for Initial Appearance and Bail	107
Defendant Interview Assignment	110
Preliminary Hearing Assignment	111
Sosnick Interview Assignment	112
Chismo Investigation Assignment	113
Assignment for Discovery and Brady	116
Assignment on Search and Seizure: Law and Tactics	121
Assignment on Search and Seizure: Motion to Suppress	126
Assignment on Search and Seizure: Critique and Summary of Motions	127
Assignment on Confessions: Law and Tactics	128
Assignment on Confessions: Motion to Suppress	130
Assignment on Confessions: Critique and Summary of Motions	131
Assignment on Identification: Law and Tactics	132
Assignment on Identification: Motion to Suppress	135
Assignment on Identification: Critique and Summary of Motions	136
Assignment for Class on MJOA Law and Tactics	137
Assignment for Competency and Insanity	139
Assignment for Jencks Act Law and Tactics	142
Assignment for Preparing Defense Witnesses/Conducting Direct Examination	143
Assignment on Cross Examination	145
Assignment on Miscellaneous Trial Situations	147
Assignment for Opposing the Examination of Witnesses	149
Assignment for Cross-Examination	150
Assignment for Class on Juvenile Court Law	151

BACK–UP MATERIALS (Presented in Section 3.6 for advance distribution to each actor asked to play a role in the case)

Defendant Interview Memo	154
Role Play: Prosecutor	159
Witness Fact Sheet	162
Role Play: Officer J.D. Lee	166
Role Play: Officer Mullen	169
Defendant Statement	170
Role Play: Detective Sedgewick	172
Miranda Warning Form (for Detective Sedgewick)	174
Memo to Officer Mullen re: Testimony at Hearing to Suppress Identification	175
Role Play: Janice Martin (Jencks Hearing)	176
Role Play: Detective Corcoran	178
Role Play: Jack Hamm[illegible]	180
Role Play: Janice Martin (Testimony in State v. Chismo)	182
Janice Martin Statement	184

1. INTRODUCTION

This training package is designed to assist public defender agencies in developing an in-house capability for training new staff attorneys. The materials contained in this package were developed by the Public Defender Service of the District of Columbia -- a D.C. financed defender system providing representation to those unable to afford counsel in criminal, juvenile and mental health commitment proceedings. Norman Lefstein has been director of the project since May, 1972.

A separate document describing the D.C. system has been prepared and is available through the National Criminal Justice Reference Service.

Following an overview of each of the components of the training system for the D.C. Public Defender Service, Section 3 provides all the materials necessary to conduct the initial training program for new attorneys. Section 4 contains materials for a jury practice course which can be implemented subsequent to the initial training program. Our intent has been to make these materials as "usable" as possible; that is, we have cast them into a general format and have indicated what would have to be done in order to tailor them to a particular state's statutes and case law. You, however, are in the best position to decide which of the materials and training techniques are most suitable for your service and how to adapt these materials to your own situation.

It is important to note that the syllabus and curriculum presented in this volume are designed for use by a defender agency's Training Director. In its present format, the package could not be distributed to trainees for self-instruction.

Supplementary policy and procedure memoranda are presented in the Appendix. Although these materials are specifically geared to the D.C. program and its court and jurisdictional structure, with appropriate modifications these materials will provide useful background for the training case materials.

2. OVERVIEW OF THE PDS TRAINING SYSTEMS

2.1 Initial Training Program for New Attorneys

The initial training program for newly hired attorneys covers a six-week period. During this period, attorneys do not handle any cases and enter court only to observe. The program is administered by a senior PDS staff attorney with assistance in particular areas by five or six additional senior PDS attorneys. The program outline follows the chronology of a single case from assignment to trial. (Some aspects of jury trial practice are ommitted at this stage and presented at a second stage closer to the new attorneys' entry into the felony court.)

The program methodology involves:

(1) seminars on law and tactics in particular areas from discovery to suppression hearings to cross-examination to argument;

(2) simulated exercises and role-playing in each skill area;

(3) background assignments of substantive statutory and case law; and

(4) preparation and critique of written work and simulation performance.

With the program syllabus, performance skills, law and the facts of the single case utilized build on each other throughout the program. PDS also utilizes videotape as much as possible as the basis both for critiques and for individual reviews.

The PDS program requires the following resources:

(a) the freeing of the program director from all caseload responsibilities for the entire period, and two weeks prior to it;

(b) preparation and time for limited periods from attorneys conducting particular sessions;

(c) preparation of a program syllabus and assignments which serve both as an outline and as a practice and law guideline for attorneys;

(d) attorneys with the ability and desire to articulate and teach skills and concepts; and

(e) the availability of duplicating machines. (Although it is not essential, the use of video-tape may enhance the effectiveness of the training sessions.)

Most important, the PDS training concept requires a limitation of individual and agency workload during this period. Attorneys involved are simply not made available to the court for assignment during training. Further, such a program cannot be run on a staggered basis, hence a premium is placed on starting all new attorneys together. While important to the methodology, this caseload limitation and non-staggered entry date concept is also efficient and economical in practice. It permits concentration of time and resources in a limited period, ensures uniform dissemination of skills, information and experience, creates entry level group reinforcement and communication, and reduces the responsibilities of supervisors in practice.

Most defender agencies which eschew this kind of program concept do so not because of any basic disagreement with its necessity or desirability, but because they do not have the time or resources. Ultimately, however, they may spend at least as much time over a longer period in (a) attempting to correct bad habits gained in practice without any skills or theoretical foundations, (b) one-on-one supervision or training which is duplicative in areas which could be covered in common for a group, (c) answering simple but essential questions posed by new attorneys on a random basis, (d) breaking attorneys in gradually in on-the-job training which requires lower workloads and more supervision, and (e) in short-term turnover due to firings or voluntary resignations because the experience or development is not what was expected (the latter is particularly likely with the most qualified new attorneys). Perhaps most important, however, is the fact that new attorneys can reinforce each other in groups are are reinforced by a clear recognition that they are important enough to the agency to warrant concentration of time and effort on them.

It is clearly crucial to allocate resources to some kind of extended, well-planned, initial training program. The outline syllabus and case materials used by PDS and presented in later sections, provide a guideline and example to others, and can be modified for use by any defender service.

2.2 One-On-One Supervision and Entry Level Practice

Each new and younger attorney is assigned to a senior attorney for at least the first year of practice. The senior attorney is available for consultation at any time and is encouraged to initiate contacts and review new attorney performance. This system is only as good as the people involved and the time they have or make availale. No matter how well it is structured it may not work as well as it should. For this reason, PDS does not rely on it as a primary supervisory, training and evaluative vehicle.

The PDS combines "one-on-one" with entry level practice in the Family Division of the Superior Court by all new attorneys under one senior supervisory attorney. PDS has also attempted to set caseload limitations at this level and to permit the gradual evolution of a workload. All three are essential second-step training methods. The new PDS attorneys view this ten-month period, at least in hindsight, as an extremely valuable experience.

The limitation of caseload at this court level and phase of experience is crucial to attorney development and performance. Particularly if loads are not limited, multi-attorney groups that work together under close, senior attorney supervision are vital. Otherwise, all the conceptual benefits of the training period will be lost quickly in the maze and reality of practice. Practice and training must reinforce each other: At this level of practice, habits are developed, experience gained and attitudes formed. Minimizing its importance tends to necessitate replication of training at the "real" trial level.

The final aspect of this component is rotation to the Criminal Division of the Superior Court in less than one year. Attorneys are eager for this assignment within a year, and training staff feel a longer period of time in the Family Division could be counter-productive.

Other defender programs in other jurisdictions can clearly replicate this component. Because so few manage the initial period well, it is very important. The Massachusetts Defenders Committee, for example, places new attorneys, after an initial training period, in a District Court for six to nine months of non-jury representation, then Superior Court for the same period (for handling felonies with jury trial possibility), followed by Appeals and/or assignment for one year to either District Court or Superior Court.

Concurrently, a District Court unit will be run by an attorney with substantial Superior Court experience, one or two others with some such experience as well as new attorneys. The lead attorney is responsible for limitation of caseload, in-court observation, pre-trial preparation and conducting weekly unit meetings.

2.3 Bi-Weekly Staff Meetings

Every other week, PDS conducts a staff meeting devoted primarily to a substantive legal topic of interest to all attorneys. The topic is prepared and delivered by a senior PDS attorney. A memorandum based on the resulting discussion occasionally is prepared for the staff and distributed after the meeting.

This meeting system is an excellent vehicle for (a) disseminating knowledge and experience to all attorneys, (b) reinforcing the importance of sharing and legal and experiential development, and (c) encouraging communication among a large staff which may otherwise not occur without a formal structure. The training director is attempting to correct a possible weakness in this component by ensuring that the topics are covered in some sort of relevant order and are planned well in advance.

No defender group can aschew the importance of regular staff meetings, in units and *en masse*, if only as a source of contact among attorneys. Further, particularly in larger or separated defender programs, there is a great need for sharing views and information even if it is only done orally. In most programs, there are experienced attorneys who could conduct a meeting on short notice, with little formal preparation, on a variety of problems or issues. The resulting feedback would benefit that attorney as well as others, particularly those with less experience.

2.4 Study Groups

The PDS has recently begun a new component designed to address on-the-job training systematically as well. Attorneys have been divided into five groups each led by one senior person. The groups meet bi-weekly to work together on a sample case problem prepared to replicate the initial training program on an advanced level. Groups determine their own sequence, using videotaping, seminars, or role-playing.

The purposes of the study groups are: (1) to enable senior staff to keep current on the development of staff attorneys; (2) to bring a cross-section of experience to bear on the problem or issue being studied; and (3) to encourage another form of communication among staff members.

At PDS the cases are prepared by the Training Director; if role plays are used, he and his staff will prepare the relevant documents, such as those used in the *Chismo* case, and will obtain and coach "witnesses" and other key persons. (PDS seeks people with some acting experience, if only on an amateur level, and occasionally has paid them a small stipend for their appearance. Attorneys themselves or their spouses often fill the bill quite well.) For the study group members some preparation is necessary. Their assignments are usually along the lines of, "Be prepared to cross-examine Officer Boyd."

This component is experimental and is designed to meet a perceived need to improve the one-on-one system and to work in smaller groups than the staff meeting. PDS is aware that it may be "meeting the attorneys to death" but feels the value of such exercises to the attorney's practice should makes its case. Further, it is an effort to remedy the lack of regular in-court observation. It is also a way to achieve internal communication and attorney evaluation by methods other than work reports and casual observation and discussion -- particularly for attorneys in their second and third year at PDS.

Other defender programs might adopt either the unit meeting on individual cases, the staff meeting or the study groups. Two of the three, at least, would be preferable. They each have common themes, purposes and advantages and disadvantages, but they are all relevant. The unit-study group meetings are most closely allied; the larger staff meeting has some different purposes which are of independent value.

2.5 Training Manual - Central File

PDS has always had a central bank or file in the library which contains motions, memoranda and briefs on various matters. However, little quality control was exercised, nor any real effort to systematize, cover different areas or eliminate duplication. Yet such a rudimentary file alone is of tremendous value in a defender organization and prevents "reinvention of the wheel." As

part of a recent LEAA training grant awarded by the District of Columbia Office of Criminal Justice Plans and Analysis, PDS is attempting not only to develop a better central file system but also to produce a trial manual providing ready access to cases and tactics pertaining to the most common problems and issues that may arise prior to or at trial. The manual outline alone is a useful guide for attorneys.

To perform this task and to develop detailed handbooks on particularly important scientific evidence matters, PDS has a staff of four -- three law clerks and an attorney-program director. While such resources may not be available to all defender programs, the economy and efficiency of a central file and a trial manual type catalogue of information should be obvious, particularly in heavy workload systems. To develop the rudiments of such a system simply requires an outline, a demand for copies of attorneys' work, and a person to catalogue and file. Drafts could be circulated for comment; particular matters could be the subject of unit or staff meetings, and so on.

2.6 New Developments Circulation

PDS circulates "squibs" to all attorneys on every new criminal law case of importance. Attorneys receive the squibs in card form, indexed by subject matter for alphabetical filing. This does not replace individual reading and research, but is of great assistance to staff attorneys as a reference to new developments in specific areas relevant to their current cases. Any defender with an appeals staff could do this easily.

2.7 PDS Bulletin and Criminal Practice Institute

These two items relate directly to private bar training. The *Bulletin* contains articles and notes on criminal practice matters of interest, generated by PDS or others, and keeps them advised of PDS practice. It serves as a forum of information, training, education and publicity.

The Criminal Practice Institute (CPI) is run annually by the Young Lawyers Section of the D.C. Bar Association in close cooperation with PDS. The Institute produces an excellent manual every year on various procedural, substantive and tactical matters. The CPI is an ambitious undertaking which other defender services are

probably not in a position to emulate; it is a deliberately planned effort that is directed toward a general audience, and requires a substantial amount of preparation and administration.

3. TRAINING OF NEW STAFF ATTORNEYS

3.1 Introduction

The Public Defender Service's initial training program for attorneys new to the staff is approximately six weeks in length. It covers five substantive areas: "Assembling the Facts"; "Attacking the State's Evidence"; "Competency and Insanity"; "The Trial"; and, "Family Division." It also includes tours of the courthouses and detention facilities. The schedule of the six weeks is shown in Figure 1, on the following page.

The training program for new staff is built around an actual case, *"State v. Chismo"*, which bears significantly upon all of the topics except Competency and Insanity and Family Division. This section contains the materials used to conduct exercises which focus on the stages of the case from arrest to trial.

3.2 Using the Training Case Materials

The curriculum and training activities contained in this training package have been separated by weeks and by days of the week. Preceding each new week, an overview of the topics, training techniques, exercise materials, and back-up materials for the instructor have been provided. The *Weekly Overviews* complement the complete training schedule by providing the training director with a summary of what specific activities will take place each day. By reviewing these overviews, the director may prepare for handing out assignments, securing video-tape (if accessible), and scheduling field visits or lecture appearances.

Each day of the training week is organized in the following fashion:

(1) a brief explanation of the topic for the day and the activities designed to support trainee learning; and

(2) exercise materials which are distributed to the trainees.

Within the week-by-week sections, it is important to note that supporting documents only include the materials distributed to trainees on specific days of the week. All assignment memos and

Figure 1
Public Defender Service Training Program

WEEK	Day 1	Day 2	Day 3	Day 4	Day 5
I	2:00 Orientation	9:30 Court Observation 4:00 Discussion	Initial Appearance and Bail 10:00 Class 2:00 Conduct a Bail Hearing	Assembling the Facts I 10:00 Interviewing the Defendant 2:00 Preliminary Hearings - Probable Cause	Pick up Cases with Staff Attorneys
II	**Day 6** Assembling the Facts II Investigation 10:00 Interview Complaining Witness	**Day 7** Assembling the Facts II Investigation - continued 10:00 Instruct Investigator 2:00 Review Investigator's Report - Discuss Ethical Issues	**Day 8** Assembling the Facts III Discovery and *Brady* 10:00 Status Hearing 3:00 Class	**Day 9** Tours 9:30 District of Columbia Jail 2:00 Metropolitan Police Department	(open)
III	**Day 10** Attacking the State's Evidence I Search and Seizure 2:00 Class	**Day 11** Attacking the State's Evidence I Search & Seizure-continued 10:00 Motion to Suppress 2:00 Motion to Suppress-continued	**Day 12** Attacking the State's Evidence I - Search & Seizure-con't. 10:00 Summary & Critique II - Confessions 2:00 Class	**Day 13** Attacking the State's Evidence II Confessions - continued 10:00 Motion to Suppress 2:00 Motion to Suppress-continued	**Day 14** Attacking the State's Evidence II-Confessions - continued 10:00 Summary & Critique III - Identification 2:00 Class 7:30 Ride in Police Cars
IV	**Day 15** Attacking the State's Evidence III Identification - con't. 10:00 Motion to Suppress 2:00 Motion to Suppress-continued	**Day 16** Attacking the State's Evidence III- Identification-con't. 10:00 Summary & Critique Sufficiency of the State's Case 2:00 Class	**Day 17** Competency and Insanity 10:00 Class 2:00 Tour	**Day 18** The Trial I *Jencks* Act 10:00 Class 2:00 Hearing	**Day 19** The Trial II: Preparing Witnesses to Testify - Direct Examination 10:00 Prepare Alibi Witness 2:00 Direct & Cross-examination of Alibi Witnesses
V	**Day 20** The Trial III Cross-Examination 10:00 Class 2:00 Cross-Examine Accomplice	**Day 21** The Trial IV Misc. Trial situations 10:00 Class 2:00 Tour Women's Detention Center	**Day 22** The Trial V: Opposing the Examination of Witnesses 10:00 "Janice Martin" 2:00 The Defendant	**Day 23** The Trial VI Cross-Examination 10:00 Cross-Examine Janice Martin 2:00 Cross-Examine Janice Martin	The Family Division I 10:00 Tour Juvenile Detention Facilities
VI	The Family Division II Juvenile Court Law 10:00 Class	The Family Division III Court Observation	The Family Division IV 10:00 Practice Hints 2:00 Social Resources	(open)	(open)

role play materials are grouped together at the conclusion of the weekly sections. Section 3.6 contains all back-up materials for actors who will play certain roles in the training sessions. Section 3.5 contains all trainee assignment memos.

The assignment "memos" are handed out as a package *at the beginning of the course*, since in some cases they require extensive reading or preparation on the part of trainees. The instructor should also attempt to review the schedule to note any special preparation required for lectures, the assembly of written materials or the use of video-taping.

Although the materials included in this package are those used by the Public Defender Service and therefore reflect the unique situation of the District of Columbia, they have been modified for general use. *They will, however, benefit from additional modification by the training director in your service.* For example, the teaching case, *State v. Chismo*, would benefit by having the names and locales changed to local referneces. More important, the study materials for each training topic should be augmented by the inclusion of the appropriate state codes, plus relevant state case law references.

Each separate item in this training package is accompanied by instructions for its use and suggested adaptations which will make it more relevant and effective in the local jurisdiction. Extensive changes will *not* be *necessary*, but minor modifications will improve the quality of the materials and therefore of the training.

In summary, three types of materials are used in the course and are included in this manual:

- Trainee Assignment Materials -- This package of materials, handed out at the beginning of the course, includes the reading assignments for each topic to be covered, and the schedule of formal classes and exercises applying the materials read and discussed in class to the *Chismo* case. These materials are in Section 3.5 of this document.

- Exercise Materials -- These materials relate to the training exercises and are distributed to the trainees at points during the course which simulate the timing of information availability in the conduct of a real case. The "Schedule for Distribution of Exercise Materials"

(Figure 2) outlines the timing for distribution during the first twenty-three days of the course (end of *Chismo* case). The distribution of these materials is also noted in each weekly overview. The materials are included in the weekly sections, marked by day of distribution.

- Back-up Materials -- Materials used in the conduct of the training course (e.g. role play profiles, instructions for simulation, etc.) are contained in Section 3.6. These materials, unless otherwise noted, are not distributed to trainees. Rather, they are used to prepare the various "actors" who appear at different times in the *Chismo* case. Each weekly overview notes the back-up materials necessary for each day's session. The appropriate materials should, however, be distributed in advance to each actor who will be asked to play a role in the case.

Figure 2
Schedule for Distribution of Materials

Day	Activity	Materials to be Distributed
1	Orientation	Bail agency report
2	Court observation	No materials
3	Initial appearance and bail	PD 251 (Report of Crime Against Person or Property)
4	Interviewing the defendant and preliminary hearings	Sosnick Liquor materials (for day 6) and suggested defendant interview memo (to be distributed after mock interviews)
5	Pick up cases	No materials
6	Interview complaining witness (Sosnick)	No materials
7	Instructing investigator and reviewing investigator's report	Investigative Report re: Janice Martin and Indictment (to be drafted according to law of the jurisdiction)
8	Status hearing and class on discovery	Defendant statement, FBI report, medical report on victims of sex offenses (for same day)
9	Tours	Police department general orders on search and seizure confessions, and identification (if available in the jurisdiction), Prosecution Report (for Days 10-16)

Day	Activity	Materials to be Distributed
10	Search and Seizure	No materials
11	Search and seizure motions	Miranda Warning Form (day 12-13)
12	Search and seizure critique and class on confessions	No materials
13	Confessions motions	No materials
14	Confessions critique and class on identification	Investigative Report re: Officer Mullen
15	Identification motions	Hypotheticals for motions for judgement of acquittal class (day 16)
16	Identificaion motion critique and class on motions for judgement of acquittal	No materials
17	Competency and insanity class and tour of mental health facilities	No materials
18	Jencks Act class and exercise	Janice Martin statement and notes by Officer Corcoran (for same day); investigative report re: Jack Hammer (for day 19)
19	Direct examination	Memo re: Chismo's Accomplice Bob Seidel materials (day 20)
20	Cross-examination class and exercise	No materials
21	Miscellaneous trial situations and tour	No materials
22	Opposing the examination of witnesses	No materials
23	Cross-examination of Janice Martin	No materials

3.3 Special Training Notes

Many of the assignments in the teaching case, *State v. Chismo,* require mock proceedings of investigation, cross-examination, discovery, etc. These proceedings involve a training technique known as "role-play," in which persons briefed on the facts of the situations play out the actions according to their understanding of the motivations and feelings of the individuals they are portraying. Role-play is an effective training technique because it simulates both the factual and emotional content of a situation and thereby makes the situation more realistic. It is not, however, a technique which works "automatically." The key to the effective use of role-play lies in the manner in which, after the situation has been acted out, the instructor debriefs the participants. For this reason, we have included a separate section (Appendix E) on the methodology of role-play and how to use it effectively in connection with the *Chismo* case.

Simulation is the key to effectiveness in the "Chismo" case. The course simulates reality only to the extent that the trainees are required to look at the case as it unfolds. The distribution of case materials at the appropriate moments is the most important administrative detail in the conduct of the course. Simulation is further enhanced by selection of "actors" and training sites. Whenever possible, use police officers, prosecutors, (even judges) to play themselves; use people (drama students) unknown to the trainees to play the roles of defendant, victim and witness. Whenever the assignment involves a courtroom task, conduct the class in an actual courtroom.

The extensive use of role-play and simulation in this course allows maximum practice opportunity for the trainees. The recommended maximum group size is twelve. If the class is larger, the training director should divide the group for the practice components.

The schedule for training is suggestive. Feel free to add or delete topics, and to shift the schedule around. For example, you may want to hold "Competency and Insanity" and "Family Division" until the completion of the practice case, *State v. Chismo* Tours of facilities may have to come on certain days within the training period, thus necessitating a variation in scheduling.

PDS has found that the workload over the duration of training is uneven. Trainees should be advised of this at the beginning of the course so they can read ahead. Search and Seizure, for instance, is highly complex and requires extensive trainee preparation.

3.4 The Training Case: *State v. Chismo*

The training case currently used by PDS, *State v. Chismo*, is based on an actual rape case. It has been selected as a training case because it touches upon every important aspect of criminal practice and therefore shows how each phase of a case relates to the others. The case materials have been modified somewhat for this training package; some of the more sensational details of the case which did not affect the legal issues involved have been left out. Place names remain local to the District of Columbia; you may want to change them to your local equivalents.

OVERVIEW OF WEEK I

OVERVIEW OF WEEK I

	TOPICS	TRAINING TECHNIQUES	EXERCISE MATERIALS	BACKUP MATERIALS
Day 1	Orientation to the jurisdiction and service; explication of court & police system; status of defender's office	Presentation; Discussion	Bail Agency Report (for day 3)	None
Day 2	Operating styles of the various presiding judges and prosecuting attorneys	Courtroom observation; Discussion	None	None
Day 3	Initial Appearance and Bail; Recognizance; Identification and Interviewing clients	Presentation; Role Play to argue for the release on bond of defendant	Report of Crime Against Person or Property (PD 251)	None
Day 4	Interviewing the defendant; preliminary hearings	Role Play of attorney interviewing client; Mock preliminary hearing	Defendant Interview memo (to be distributed after mock interviews); Sosnick Liquor Materials (for day 6)	Defendant Interview memo; Role Play: Prosecutor
Day 5	Field experience with staff attorneys; Following cases through appearance; Bail; Hearings	Building experience through on-site observation	None	None

Week One: Day 1
ORIENTATION

The first day's meeting is given over to orientation to the jurisdiction and the service. It is probably not necessary to spend an entire day on orientation, but it should cover a fairly full explication of the court and police system. It might also include a briefing on the "political" status of the defender's office, in terms of the degree to which it is accepted and supported in the community and what major political problems, if any, it faces. The instructor should distribute the Bail Agency Report (for Day 3) and trainees should be reminded to begin assembling their own *Chismo* file of roles and materials as they become available.

Week One: Day 2
COURT OBSERVATION

The second day's training consists of courtroom observation, usually starting in the Felony Court. The discussion which follows centers mostly on the style of the presiding judges and the prosecuting attorneys.

BA-CI 2/72

DISTRICT OF COLUMBIA BAIL AGENCY

To
Re: United States of America
v.
Mack Chismo
44 yrs. d.o.b. 8/7/29

33 No.
Charge Rape, Burglary I

The following information is submitted pursuant to 23 DC Code 1301 et seq. for use in determining conditions of release.

VERIFIED BY

RESIDENCE-FAMILY
Present Address 1038 South Frederick #911 Arlington, Virginia ☒ Yes ☐ No friend

Length of residence 2 years Living with friend, 2 children

Former address Milwaukee, Wisconsin ☒ Yes ☐ No friend

Length of residence 3 years Lived with

Marital Status divorced D.C. Area resident for 2 years ☒ Yes ☐ No friend

Other Family ties in D. C. Area (not living with def.) none ☐ Yes ☐ No

EMPLOYMENT-SUPPORT
Present Employment self-employed Income $80 weekly ☐ Yes ☒ No

How long 2 weeks Type of work maintenance

Prior employment 1038 South Frederick Arlington, Virginia ☒ Yes ☐ No friend

How long 2 months Type of work maintenance Reason for leaving going to school

If unemployed, how supported Education 12th grade

RECORD OF APPEARANCE AT COURT PROCEEDINGS Preliminary record check reveals no prior failures to appear

OUTSTANDING WARRANTS OR DETAINERS OTHER PENDING CHARGES None known

PRIOR CONVICTIONS '66 Dyer Act/3 yrs.: '51 Brkng & Entrng/2 yrs. No record on file with MPD.

REMARKS Deft. is also student at Control Data Institute, 3717 Columbia Pike, Arlington, Virginia

---

RECOMMENDATION

☐ PERSONAL RECOGNIZANCE—Indicated by the defendant's strong ties to the community and his minimal threat to the safety of any other person or the community.

☒ CONDITIONAL RELEASE—Indicated by the relatively weak community ties of the defendant and/or his potential threat to the safety of any other person or the community.

- ☐ Condition I: Custody release to
- ☒ Condition II: (if checked, the following is recommended)
  - ☒ a. That the defendant must reside at ;
  - ☐ b. That the defendant must reside with ;
  - ☒ c. That the defendant must report weekly to the Bail Agency by telephone;
  - ☐ d. That the defendant must be in at night by 10:00 PM, or by because the defendant .
- ☒ Condition III: (if checked, the following is recommended)
  - ☐ a. That the defendant must obtain employment or become a student within fifteen (15) days and report this to the Bail Agency immediately.
  - ☒ b. That the defendant must maintain his present employment or student status.
- ☒ Condition V: That the defendant may not leave the jurisdiction during the pendency of this matter.
- ☒ Other Conditions: (if checked, the following is recommended)
  - ☐ a That the defendant undergo narcotic surveillance and necessary treatment.
  - ☒ b That the defendant stay away from the complaining witness during the pendency of this matter.
  - ☐ c

☐ PART-TIME CUSTODY RELEASE (Work Release) under the supervision of the Dept. of Corrections.

☐ DOES NOT RECOMMEND RELEASE on personal recognizance or a conditional release. The Agency recommends other conditions as determined by the Court because . A positive recommendation will be made by the Bail Agency if and when the listed impediment is removed.

Charles Johnson Date 9/7/73
Bail Agency Representative

LC-1
3-3738-74

BEST COPY AVAILABLE

Week one: Day 3
INITIAL APPEARANCE AND BAIL

As a lead-in to the case study, the third day of training reviews the law and tactics on bail procedures in the jurisdiction. Any Release-on-Recognizance program procedures would be explained at this session, plus a review of the mechanical steps to be followed in locating clients and interviewing them. PDS prepares guides to procedures for each of its courts, which can serve as a model for other jurisdictions. They are not included in sequence here because they would interrupt the flow of materials used in *State v. Chismo* and be distracting to the presentation of that case.

In a mock courtroom presentation the trainees are asked to argue for the release on bond of the defendant, "Mack Chismo." They are provided only the Bail Agency Report (distributed on Day 1), and the few additional facts included in the trainee assignment materials.

To adopt this material to your jurisdiction you may want to change the locale of the case from Georgetown to Virginia. You should add as references the appropriate state statutes, plus state case references and local court rules in place of the D.C. citations.

Exercise Material for Distribution on Day 3

REPORT OF CRIME AGAINST PERSON OR PROPERTY

14. EX. COPIES	15. DIST.	16. BEAT	17. R. A.
9UX	2D	75	109

1. COMPLAINANT'S NAME - FIRM OR BUSINESS (Last, First, Middle): Martin, Janice
2. COMPLAINT NO.: 404-214
3. STREET ADDRESS: 1607 31 Street, N.W. (basement)
4. HOME PHONE: 965-2310
18. COMPLAINANT'S OCCUPATION AND HRS EMPLOYED: Unemployed
5. WHERE EMPLOYED OR SCHOOL ATTENDING: Unemployed
6. BUS. PHONE: None
19. DESCRIBE LOCATION OR TYPE OF PREMISE: Private apartment
7. SEX: F | RACE: W | DOB: 9-21-46
8. CRIME: Rape
20. VEHICLE USED - TAG NO. AND STATE:
9. LOCATION OF CRIME (Address): 1607 31 Street, N.W. (basement)
10. DATE, DAY/TIME: 8-24-73 S-M-T-W-T-F-S
21. YEAR MAKE MODEL COLOR(S):
11. WEAPON, TOOL, FORCE OR MEANS USED: Old Hatchet and scissors
PHOTOS: ☐ YES ☒ NO FS # CID
CODE: O—OWNER R - REPORTING PERSON C—COMPLAINANT P - PARENT/GUAR
12. METHOD USED: Threatened complainant
13. CLASSIFICATION: 200

22. NAME (Last, First, Middle)	CODE	RES. ADDRESS	HOME PHONE	BUS. PHONE
23.				
24.				

25. IDENTIFY SUSPECTS BY NUMBER (Include Name, Address, Sex, Race, Age, Height, Weight, Eyes, Hair, Clothing etc.) IF ARRESTED GIVE ARREST NUMBER AND CHARGE (Omit description if arrested)

(1) N/M, 30 to 35 yrs. 5'11" to 6'1", med. bld., short hair, maroon T-shirt,

(2) black pants, white sneakers, very dark comp.

26. NATURE OF INJURIES AND LOCATION ON BODY: Laceration to head
27. HOSPITALIZED - WHERE?: Georgetown Univ. Hosp. ☐ ADMITTED ☒ RELEASED
28. TRANSPORTED BY: Private auto
29. TREATED BY: Dr. Lamay
30. TYPE OF PROPERTY TAKEN: TV, Sewing Machine, Cash
31. LOSS VALUE: $128.00
32. TRADEMARKS, ACTIONS OR CONVERSATION OF SUSPECT: Apologized to compl.
33. EXACT LOCATION OF PROPERTY: in living room
34. POINT OF ENTRY: side window
35. VEHICLE FROM WHICH THEFT OCCURRED — TAG NO. STATE YEAR AND MAKE: N/A

36. NARRATIVE: (1) CONTINUATIONS OF ABOVE ITEMS (INDICATE ITEM NUMBER) INCLUDE ADDITIONAL SUSPECTS AS OUTLINED ABOVE. (2) BRIEFLY DESCRIBE INCIDENT AND ACTION TAKEN. (3) DESCRIBE EVIDENCE AND PROPERTY INDICATE DISPOSITION AND DESCRIBE ALL PROPERTY INVOLVED. USE CONTINUATION REPORT IF MORE SPACE IS NEEDED. RECORD VALUE OF LOSS ESTIMATED BY VICTIM.

ITEM NO.

Comp. repts. that @ about 0430 hrs. she awoke and found above suspect standing by her bed. Suspect stated "don't move or make a sound." Suspect then tied comp's hand and feet to bed; removed her underclothes. Suspect then had sexual intercourse with comp. but did not reach orgasm. Suspect then untied comp. & walked her into living room.

Suspect then took money from Comp's purse, ad again had sexual intercourse, unsuccessfully w/comp. Suspect then asked comp. if she had any alcohol in the house and comp. replied no. Suspect then stated "That's OK, my bag's dope anyway." Suspect

OFFICE USE ONLY

T. T. NUMBER	DATE & TIME THIS REPORT	37. DATE TIME TYPE NO.	38. REPRODUCE NO.
	8-24-73 0800		

39. REPORTING OFFICER UNIT & BADGE NO.	40. STATUS (Check One) ☐ UNFOUNDED ☒ OPEN ☐ CLOSED ☐ SUSPENDED	41. UNIT REFERRED TO	42. UCR DISPOSITION
Thomas A. Daza			
43. SECOND OFFICER UNIT & BADGE NO.	44. SUPERVISOR APPROVING UNIT & BADGE NO. 2D-T Sgt. R. Sergeant 2D-T	45. REVIEWER NO.	

PD 251 REVISED 3.71 METROPOLITAN POLICE DEPARTMENT, WASHINGTON, D.C.

REV. 2-68

METROPOLITAN POLICE DEPARTMENT
WASHINGTON, D. C.
CONTINUATION REPORT

COMPLAINT NUMBER	ARREST NUMBER
402-214	
UNIT: 2-D	T T NUMBER

ITEM NO.

further stated he had been paid $200 to commit this offense, because he had heard comp. did not like black people.

Suspect then apologized to comp., told her not to look at him, and began to remove pieces of complainant's property from her apt. and place it in an unknown auto. This property includes one portable Panasonic B&W T.V. set, 2-tone gray, Ser.# unk., comp. val. = $125.00, 12" screen on T.V. One 1957 "Emerson" portable hi-fi set; orange & wht, in color. Comp. val. = $10.00. One portable sewing machine, Sears Kenmore, Model #1207, Ser # Unk. Comp. Val. = $130.00. Also taken was approx. $28.00 in U.S. currency, comp. tot. loss val. = $293.00. Officers est. = $128.00.

During the rape suspect struck comp. in head with unk. hard object causing a laceration to her scalp. Comp. not seriously injured. Suspect also took comp. driver license & several business cards with addresses of comp's friends. Also unemp. I.D. card.

SIGNATURE OF REPORTING OFFICER	BADGE	SUPERVISOR APPROVING	REVIEWER	NO.

Week One: Day 4

INTERVIEWING THE DEFENDANT: PRELIMINARY HEARINGS

Interviewing the Defendant

The morning is spent interviewing the defendant, Mack Chismo. The exercise focuses on establishing rapport with the client, learning the defendant's background, and exploring all possible defenses.

The actor playing Mr. Chismo is prepared for his part by reading the Memo of Defendant Interview. The attorneys have available a copy of the police report (PD 251) which was given to them at the end of the preceding day. The defendant interview memo which was used to prepare the Chismo actor, is distributed to the trainees after the critique of the interview session.

One attorney is chosen to interview the defendant; the others observe. If the facilities are available, the interview is videotaped and played back. (See Appendix E for how to debrief at playback.)

Preliminary Hearing

The afternoon session runs through a mock preliminary hearing for probable cause. Because preliminary hearings in D.C. are based on hearsay, PDS uses only one witness, the officer in charge of the case. In jurisdictions where live witnesses are called, the Training Director should prepare his witnesses with other back-up materials applicable to them.

As we suggested in Section 3.3, if possible use a prosecutor and a detective for their respective roles. If this is not possible, senior attorneys would be good choices for these roles, since they will have had the necessary courtroom experience to indicate the prosecution's and police officer's style in a realistic manner. Also, the two roles do not require much in the way of character development; previous acting experience, therefore, is not essential.

Exercise Material for Distribution on Day 4 (After Critique of Defendant Interview)

MEMORANDUM

TO: Files, United States v. Mack Chismo

FROM: R. Judd, Staff Attorney

DATE: 9/11/73

RE: Interview with Defendant, D.C. Jail, 9/11/73

Today from approximately 9:45 until 11:30 a.m. I interviewed the defendant, Mack Chismo, at the D.C. Jail concerning his pending charge. He gave me the following information.

Basic Data

Mack (no middle name) Chismo is a negro male, age 44, born on August 7, 1929 in Austin, Texas. His parents were Eugene Jerome Chismo and Daisy Cook Chismo, both deceased approximately ten years ago. Defendant's father was a bricklayer, and also did general handyman work. Chismo has one older brother, Otto Chismo, age 46, who resides in Milwaukee, Wisconsin where he is employed as a cement finisher. He also has two younger sisters, Mrs. Luanne Chismo Albert of Dallas, Texas (age 38) and Ms. Charismo Chismo of Austin (age 28).

Defendant says he is married to Marie Chismo, but states that they are "common law." Chismo was also married approximately 20 years ago in Texas to Jane Seymour, but they were divorced approximately two years later. He has not seen her since.

Defendant was raised in Austin, Texas, and graduated from Jubilation T. Cornpone High School there in 1946. Following graduation, he spent three years in the United States Army, and received an honorable discharge in 1950. He served as a rifleman in an infantry platoon, and states that he did not have any disciplinary problems in the military. Following his discharge, he went to Milwaukee, Wisconsin, and stayed with his brother looking for employment. He worked at a variety of jobs in the Milwaukee area, mostly building maintenance work, and some TV repair work. He also entered an apprenticeship program for training as a carpenter, sponsored by a local union, but did not complete the program.

In 1965, the defendant was arrested after a trip from Milwaukee to Chicago with a friend of his, and charged with interstate transportation of a stolen vehicle. He did not obtain release on bond pre-trial. He was convicted following a jury trial in federal court in Milwaukee, and received a one to three year sentence. He testified at the trial, and stated that he had not known that the car was stolen. He was released in late 1968 from the Federal Penitentiary at Terre Haute, Indiana, and returned briefly to Milwaukee where he sought employment. Because jobs were difficult to come by, and because defendant thought he needed a change of scenery, he came to

the Washington, D.C. area in 1969, approximately June or July. He was discharged from parole supervision in Milwaukee in March 1969.

He was arrested in Fairfax County, Virginia in November of 1972, for burglary of a service station. He pled guilty to breaking and entering two days later, and served his 90-day sentence.

Employment

Chismo's work record over the last few years has been spotty, because he states he has had trouble obtaining employment. He has done some construction work, mostly thorugh the assistance of his father-in-law, Jack Hammer, 1402 South Frederick Street, Apartment 3, Arlington (787-2623). However, it is usually for a different construction company each time, and usually the job does not last more than three or four weeks. He also obtained employment for a two month period as the maintenance man in the apartment building where he lives in Arlington, Virginia. His last employment prior to his arrest was with his father-in-law on a night shift for the Agnew Construction Company, Silver Spring, Maryland, working on a building going up at Columbia Pike and Highland Drive in Arlington, Virginia. He worked there from August 20 to August 30. He did carpentry work on this job, and believes that his performance was satisfactory. However, he states that that job is now finished, and he does not know whether he could get additional work with the Agnew Company or not.

At the time of his arrest, defendant was a student at Control Data Institute, 3717 Columbia Pike, Arlington, Virginia, studying business machine repairing.

Family

The defendant resides at 1038 South Frederick Street, Apartment 911, in Arlington, Virginia (no telephone). He lives there with his wife, Marie Chismo (age 37), and her two children from an earlier marriage, Samuel (age 8) and Susan (age 6½). Mrs. Chismo is not employed, but does some occasional day work. His employer when he did maintenance work at that building was the Robin Realty Company, and his supervisor was the building manager, Mrs. Bird.

Chismo says that a friend of theirs, Ms. Xaviera Hollander, lives in an apartment on the same floor, and has a telephone where messages can be left for the Chismos if necessary (telephone 669-6969).

Health

Defendant states that he is in good health, and denies any previous hospitalizations except to have his tonsils removed as a child. He says he is 6 feet tall, and weighs about 160 pounds. He states that he has never used narcotics, but smoked marijuana on about two occasions when he was in the service. He drinks alcohol, and on occasion says that he drinks heavily and does not recall events which occurred during the drinking bout. He says he drinks most anything he can get his hands on, but prefers Jack Daniels.

The defendent seemed reasonably articulate, and showed little difficulty in discussing his case with me and recalling most of the significant time periods. He states that he was an average student in school, but did not graduate. I detected no indications of any mental problems.

Circumstances of Offense

I explained to the defendent that he was charged with having raped and robbed a white female named Janice Martin in the early morning hours of Friday, August 24, 1973. Chismo immediately denied committing this offense and stated that he had been working on the evening shift on August 23 and 24, and indeed worked every night for approximately ten days from August 20 to August 30. His hours were from 4:00 p.m. to midnight, and he always worked two hours overtime which was the maximum permissible. He was working at this time for the Agnew Construction Company on the job mentioned earlier in Arlington, Virginia. He did some carpentry work and some wiring.

After cleaning up, he rode home with Jack Hammer, and went into Jack's apartment for a beer with him. This was their usual practice after getting off work. After one beer, or maybe two, the defendant says he walked home and arrived a little before 3:00 a.m. His wife was asleep, and he was careful to be quiet so as not to disturb her. (My impression is that Chismo has no specific recollection of the night of the 23rd-24th, but is simply stating his general recollection of his usual activities after leaving work. I did not press him at this interview.)

Circumstances Surrounding Defendant's Arrest

On Thursday, September 6, the defendant was not working, but he had heard from Jack Hammer that they would probably be working on another construction job beginning about September 8, somewhere near Baileys Cross Roads, Virginia. On that evening, Chismo went to a tavern where he had been a few times previously with Jack Hammer, for a few beers. The tavern is in the Shirlington area, but the defendant does not know the name nor the address. He states that he would be able to find it if he were out on bond. While at the tavern, he was talking to a white male named "Robert." He does not know Robert's last name, but describes him as approximately 25 years old, 6 feet tall, 175 pounds, brown hair with a moustache and beard. He first met Robert at the same tavern about a week previously when Robert had offered to sell the defendant a sewing machine. Chismo purchased the sewing machine from Robert for $10, and took it home to his wife, but she did not want it. He had since then been carrying the sewing machine around in his car in the hopes of finding someone to sell it to.

On the evening of September 6, Robert said that he had some ladders which he would like to sell. Chismo states that ladders are always useful in his work, and says that he told Robert that he would be interested. Robert said that the ladders were in the District of Columbia, and asked the defendant to drive him there. Chismo agreed, and they left the tavern at about 9:15 p.m.

Following Robert's directions, the defendant drove across Key Bridge and then made a few turns as Robert indicated. They ended up in what Chismo

thinks was the Georgetown area, in front of some nice houses on a street running North and South with a substantial incline. The defendant double-parked, and Robert got out and told him to wait. Robert then disappeared through a white fence and then was gone for some time. After waiting approximately ten minutes, the defendant got impatient and decided to go look for Robert. He did not want to leave his car double-parked, so he drove around the corner where he found a parking place, near a school for either the deaf or the blind. Chismo took the keys from the ignition, but did not lock the car, and walked back to where he had last seen Robert. Chismo went through a gate which he believes is the same one through which Robert entered and wandered around in the back yard of a couple of buildings hoping to find Robert. Not seeing him, he went through a building and headed back to the street through a narrow alley beside a house. Chismo states that it was quite dark in the alley but he noticed a credit card lying on the ground which he picked up and put in his pocket. Chismo noticed at about the point where he found the credit card that a window had been broken out of the adjacent house, or at least the screen had been cut.

He then proceeded up the street, and had gone only about 5 or 6 steps when two men in street clothes grabbed him, threw him up against a rock wall with their guns drawn, pinned his hands behind his back, and handcuffed him. He realized that they were policemen then. One of them said to the other, "This must be the dude," and they went through his pockets. They found 4 strands of rope. He had the rope in order to tie the ladders on his car. They also found the credit card.

They then turned him around to face the street. One of them told him he was under arrest for trespassing. He said, "I ain't trespassing, I'm here looking for a man." A conversation ensued, and he does not remember all of it. Something like the policeman saying, "We know what you're doing here," to which he replied, "Yes, I'm looking for the man who is going to sell me some ladders." The defendant also stated that he was a carpenter, and used the ladders in his work. After obtaining defendant's name and address, the officers then asked him, "How did you get here?" He said, "By my car, it's parked around the corner." He described his car to them and told them where it was parked.

At that point, some more officers began to appear, along with a paddy wagon. One of the first two officers left and headed in the direction of his car. Just as the officer was getting back from his car, the officers moved him down under a streetlight and a lady appeared out of a house. The defendant cannot state which house she came from. She came and stood within about 10 yards of him. She had on a bathrobe and slippers. He says she looked about 26-27, white, medium height, blond hair. He remembers he was handcuffed and there were officers in uniforms standing on either side of him and in the rear. The two plainclothes officers who first arrested him stood by the woman. She hesitated for a second, then said, "Yes, it's him, I'm sure." Then she said, "I just didn't remember the moustache." He noticed several of the officers with little notebooks who seemed to be

taking down what she said, but can't recall which officers these were. She then covered her face and sobbed and the officers led her back into her house.

He was then placed in the wagon, and shoved down on the floor. He was then taken to some police station relatively nearby, just briefly, and then to what appeared to him to be a much larger building. He later learned it was Police Headquarters. He estimates that he was arrested at about 10:15. By the time he got to headquarters, it was 11:30. He was very tired because he had worked late the night before and hadn't had much sleep. He was taken into a room and photographed, fingerprinted, and then taken into another room, placed in a chair and handcuffed to the table. An officer came in and told the defendant that he was Detective Sedgwick of the Sex Squad. He read the defendant his rights from a card, and defendant recalls Sedgwick saying that he was under arrest for rape and that anything he said could be used against him. He also told him that he had a right to a lawyer. He offered him a cup of coffee. Sedgwick then asked him to explain what he was doing in the vicinity of 1607 - 31st Street and why he had the credit card and the rope. Defendant thought that he would get a lawyer when he went to court, but didn't know that he could have one on the spot. Since he had nothing to hide, he answered the detective's questions. He says he signed a written statement explaining something about what he was doing in the area, but he doesn't remember exactly what was in the statement. After the statement the detective made him strip his clothes off and they took clippings from his head, his moustache, his torso and his pubic area.

At that point, Sedgwick turned him over to a uniformed officer who took him to the cellblock downstairs in the basement and put him in a cell. He had barely managed to doze off, when he was awakened and taken back upstairs to the Sex Squad office. He looked at the clock and it was about 4:30. This time a different officer, Detective Carlton again advised him of his rights and told him that they had determined that a sewing machine and a pocketbook found in defendant's car belonged to Janice Martin, the victim of a rape, and that she had identified him. Carlton then asked him more questions about where he got the sewing machine and the pocketbook, and he answered those questions. He was very tired and sleepy and hungry. Carlton gave him nothing to eat and no coffee. He signed another statement at about 6:30. At that point, he says, he would have signed anything. Shortly thereafter he was taken from the cellblock to a cellblock in Superior Court, where I saw him a few hours later.

At this point, we had to terminate our meeting so the defendant could go to lunch. I told him I would be talking to him soon.

AFFIDAVIT RELATIVE TO THE REQUEST FOR A
UNITED STATES MAGISTRATES ARREST WARRANT FOR THE
FOLLOWING NAMED SUBJECT WANTED FOR ARMED ROBBERY, HOLDUP:

Tyrone James Roosevelt: Negro, Male, 20 years,
- DOB 4/20/51, 1375 Columbia Road, N. W., WDC.

Paul L. Sosnick, White, Male, 56 years, owner of Sosnick's Liquors, 14th & Columbia Road, N. W., Washington, D. C., reports that at approximately 9:00 p.m., immediately prior to closing, on July 14, 1973, he was approached by an unknown Negro, Male while behind the counter who asked for a pack of Kools. As Sosnick was reaching for the cigarettes, this subject stated: "GIVE ME ALL YOUR MONEY, MOTHER FUCKER, OR I'LL KILL YOU." Subject displayed a blue automatic and removed undetermined amount of money in bills from the cash register. Last seen out the door and north on 14th Street, N.W.

On July 25, 1973, compl. was shown ten black and white, look alike photographs of possible suspects by the undersigned and positively identified photo No. 205-694 of Tyrone James Roosevelt as the subject who held him up on July 14, 1973.

In view of the foregoing, the undersigned believes he has probable cause for the arrest of Tyrone James Roosevelt as the person responsible for the commission of this crime.

Malcolm R. O'Connor
Det. Malcolm R. O'Connor
Robbery Squad, MPDC

Subscribed and sworn to before me this 25th day of July, 1973.

Lawrence S Margolis
Lawrence S. Margolis
United States Magistrate

U.S. Mag's Docket 19-2378-73CR

REPORT OF CRIME AGAINST PERSON OR PROPERTY

1. COMPLAINANT'S NAME - FIRM OR BUSINESS (Last, First, Middle): SOSNICK, Paul L.			2. COMPLAINT NO.: 608-459
14. EX. COPIES: 60	15. DIST.: 4D	16. BEAT: 124	17. R. A.: 332
3. STREET ADDRESS: 14th & Columbia Road, N.W.			4. HOME PHONE: 547-9878
18. COMPLAINANT'S OCCUPATION AND HRS EMPLOYED: Businessman	5. WHERE EMPLOYED OR SCHOOL ATTENDING: SOSNICKS LIQUORS		6. BUS. PHONE: 568-9987
19. DESCRIBE LOCATION OR TYPE OF PREMISE: Liquor Store	7. SEX: M / RACE: Cau / DOB: 1/4/16		8. CRIME: Armed Robbery (Hold-Up)
20. VEHICLE USED - TAG NO. AND STATE: Unk.	9. LOCATION OF CRIME (Address): 14th & Columbia Road, N.W.		10. DATE, DAY/TIME: 7/14/73 2100h; S-M-T-W-T-F-(S)
21. YEAR MAKE MODEL COLOR(S)	11. WEAPON, TOOL, FORCE OR MEANS USED: Dark black automatic pistol		PHOTOS: ☑ YES ☐ NO FS #
CODE: O—OWNER R - REPORTING PERSON C—COMPLAINANT P - PARENT/GUAR	12. METHOD USED: Stick-up		13. CLASSIFICATION:

22. NAME (Last, First, Middle)	CODE	RES. ADDRESS	HOME PHONE	BUS. PHONE
Same as above				
23.				
24.				

25. IDENTIFY SUSPECTS BY NUMBER (Include Name, Address, Sex, Race, Age, Height, Weight, Eyes, Hair, Clothing etc.) IF ARRESTED GIVE ARREST NUMBER AND CHARGE (Omit description if arrested)

(1) #1: N/M/20's, 6', 175 lbs, brown complexion, dark glasses; long black overcoat, no

(2) further disc.

26. NATURE OF INJURIES AND LOCATION ON BODY: N/A	27. HOSPITALIZED - WHERE?: N/A ☐ ADMITTED ☐ RELEASED
28. TRANSPORTED BY: N/A	29. TREATED BY: N/A

30. TYPE OF PROPERTY TAKEN	31. LOSS VALUE	32. TRADEMARKS, ACTIONS OR CONVERSATION OF SUSPECT
$500 in bills	500	smokes Kools, sweats, dark automatic
33. EXACT LOCATION OF PROPERTY	**34. POINT OF ENTRY**	**35. VEHICLE FROM WHICH THEFT OCCURRED — TAG NO. STATE YEAR AND MAKE**
Cash Register	Ft. door	Unk

36. NARRATIVE: (1) CONTINUATIONS OF ABOVE ITEMS (INDICATE ITEM NUMBER) INCLUDE ADDITIONAL SUSPECTS AS OUTLINED ABOVE. (2) BRIEFLY DESCRIBE INCIDENT AND ACTION TAKEN. (3) DESCRIBE EVIDENCE AND PROPERTY INDICATE DISPOSITION AND DESCRIBE ALL PROPERTY INVOLVED. USE CONTINUATION REPORT IF MORE SPACE IS NEEDED. RECORD VALUE OF LOSS ESTIMATED BY VICTIM.

ITEM NO.	
	C-1 reports at above time and place unknown N/M approx 20's entered his liquor store and
	asked for pack of Kools. Produced black automatic pistol and demanded money or would kill
	compl. Subject removed from cash drawer approximately $500.00 in bills and placed proceeds
	in overcoat pocket. Last seen north on 14th Street, N.W. L.O.F. flashed 2135: N/M/20 to 30,
	6', 175 lbs, black overcoat, glasses, north on 14th Street. Mobile Crime Unit on Scene.
	Det/Sgt. O'Connor, Robbery, on scene.

OFFICE USE ONLY

T. T. NUMBER	DATE & TIME THIS REPORT	37. DATE/TIME TYPE NO.	38. REPRODUCE NO.
	7/14/73-2300 hrs.		

39. REPORTING OFFICER UNIT & BADGE NO.	40. STATUS (Check One) ☐ UNFOUNDED	41. UNIT REFERRED TO	42. UCR DISPOSITION
Off.R.T. Bates,#3145	☒ OPEN ☐ CLOSED ☐ SUSPENDED	Robbery Sq.	
43. SECOND OFFICER UNIT & BADGE NO.	**44. SUPERVISOR APPROVING UNIT & BADGE NO.**	**45. REVIEWER**	**NO.**
Off Wlm Jones, #4009			

PD 251 REVISED 3/71 METROPOLITAN POLICE DEPARTMENT, WASHINGTON, D.C.

Week One: Day 5
PICK UP CASES WITH STAFF ATTORNEYS

This day in PDS's schedule of training builds on the previous days' work with the *State v. Chismo* case. The attorneys in training accompany staff attorneys as they pick up cases and follow them through the initial appearance and bail stages, and, if possible, to interviews with defendants and preliminary hearings.

OVERVIEW OF WEEK II

OVERVIEW OF WEEK II

	TOPICS	TRAINING TECHNIQUES	EXERCISE MATERIALS	BACKUP MATERIALS
Day 6	Assembling the Facts: Investigation	Role play	None	Witness Fact Sheet - Robbery
Day 7	Assembling the Facts: Investigation	Trainees prepare set of instructions for investigators; Attorneys brief investigators	Investigative Report re: Janice Martin; Indictment (to be drafted according to the law of the jurisdiction)	None
Day 8	Assembling the Facts: Discovery; *Brady v. Maryland*	Role play	Defendant statement; FBI Crime Lab Report; Medical Report on Victim of Sex Offenses (for same day distribution by prosecutor in discovery conference)	None
Day 9	Field Visit; Detention Centers and Police Department		Police Department orders on search & seizure, confessions, & identification (if available in jurisdiction); Prosecution Report (for days 10-16)	None
	Open		None	None

Week Two: Day 6

ASSEMBLING THE FACTS: INVESTIGATION

In this training program there is one departure from the *State v. Chismo* case. In order to impress upon the new attorneys the need for *thorough preparation in investigation*, an older case, the "Sosnick Liquor Case," is used. In it, the complainant in a liquor store stick-up becomes unavailable after the interview until the trial, and the defense attorney has only one opportunity to establish the complainant's version of the facts.

The materials for the trainees include an affidavit and a Police Department Offense Report, which were distributed on Day 4. The attorneys must develop their own lines of inquiry from just the affidavit and the Offense Report.

One key point here is that there was a customer present in the store. New attorneys often overlook this fact and focus instead on just Mr. Sosnick and his clerk.

The procedure for the interview with Mr. Sosnick is the selection of one trainee to interview in the presence of the group. The interview is videotaped and at the conclusion the Training Director asks if anyone has questions not clarified in the initial interview. This is followed by a general critique.

The witness is prepared from a witness fact sheet included in the back-up materials.

Week Two: Day 7
ASSEMBLING THE FACTS: INVESTIGATION
(continued)

The assignment for this day requires the attorneys to prepare a set of instructions for their investigators. These are submitted for comment and criticism to the instructor. In addition, several hypothetical situations raising questions of ethical procedures in investigation are presented to the attorneys and discussed in class.

The attorneys are required to brief the investigator orally. Later, they receive a previously prepared investigator's report, which they must critique. For this exercise, then, you will need the materials which follow and persons to play the role of investigators. If you have student investigators, they are clearly the best choices; the time required of them is minimal -- just long enough to receive their instructions. Note that the investigators do not carry these instructions out; all attorneys receive the same investigator's report, which is included in these materials.

Public Defender Service

MEMORANDUM

TO: [Defense Attorney]

FROM: Student Investigator

SUBJECT: Janice Martin

I spoke to Janice Martin, pursuant to your request. She's the victim in the Chismo case, as you may recall. I told her I was working on the case for the Public Defender Service and you.

Her story seems pretty consistent, and I was unable to develop anything particularly helpful. She says basically that Chismo broke in by cutting a screen over one of the windows, and she thinks the window wasn't locked. From her statement, she got a pretty good look at his face, and there's no doubt about the identification. It's "rock-solid."

She says there's a light by the door to her bedroom, and she leaves a night light on in the bathroom, which opens off her bedroom. The door was closed that evening.

Beside her bed there's a reading light -- I would estimate about two feet away from the side of the bed. She ways this was on because she had forgotten to turn it off.

After the ordeal was over, she just wept for a few minutes and tried to calm down. It must have really been a tough experience for her. She says she is moving out of this neighborhood because there have been other rapes, apparently simllar to this one, in the same block. She says she understands that Chismo is responsible for these too. She has gotten this during the course of giving statements to the police.

Describing the night Chismo was arrested, apparently the cops found a credit card of Janice's on the defendant. She mentioned wanting to get it back because she couldn't get a new one without surrendering the old.

According to her statement, there were lots of cops around and quite a bit of confusion. An officer came to the door who had been "staking out" the neighborhood trying to catch the rapist. The cop said they had arrested a man and would like her to come and look at him.

She was wearing her bathrobe, and there were two police cars with their beacons revolving, and a paddy wagon. She went out to identify Chismo, and there was no question in her mind that this was the man. "I'll never forget that face." She doesn't know the names of the cops who were there, but she did describe a Sex Squad officer who was very kind to her the night of the rape, and really lit up when she talked about him. Anyhow, she saw Chismo up against the paddy wagon, with a cop on each side of him. His hands were behind his back and she thinks they were handcuffed, but wasn't sure. She only came to about ten yards from Chismo before she identified him. It's not clear what she said.

She mentioned looking at a lot of pictures for the police after the rape, but to the best of her recollection, she couldn't make an identification of any of them.

She thinks Chismo is on drugs, and says he probably pays for them with crime and his welfare check, like most blacks.

I've got some notes from the interview, but they're not too clear. Should I keep them? Also, do you want me to try to get a signed statement? I'm sorry it wasn't more helpful, but tomorrow I'm going to see Chismo's wife, and hopefully she'll come up with some better stuff.

Week Two: Day 8
ASSEMBLING THE FACTS: DISCOVERY

The topic for this day is discovery. For discovery you will need someone to play the role of the Assistant District Attorney assigned to the case (a senior attorney is preferable).

The assignment sheet for this day's session should be amended to include the appropriate state statute and case references, in lieu of the D.C. references.

Other materials which we have not yet come to in this overview of training will be relevant to discovery, such as statements to be made by the arresting officers and by the complainant, "Janice Martin." As we pick these materials up in the evolution of the case you may want to keep in mind their possible use during the discovery session.

The prosecutor conducts pre-trial conferences with each trainee, then appears at a hearing in court with each trainee: The purpose of the hearing is to ascertain the status of discovery between the prosecutor and the defense attorney. The exercise is designed to give the trainee experience in dealing with the informal discovery procedures utilized in the District of Columbia. The attorney who plays the prosecutor then conducts individual critiques with each trainee.

Office of the Sex Section
Metropolitan Police Department
Washington, D.C.
Friday, 9/7/73
12:30 A.M.

Re: Rape and Burglary I against Janice Martin W/F 25 years of 1607 31st N.W., occurring about 3:30 A.M. 8/24/73 inside 1607 31st St., N.W. by a N/M in his thirties, 5'11" to 6'.

Statement of Mack Chismo, N/M 44 yrs., Born Austin, Texas, 8/7/29 to Daisy and Eugene Chismo. Subject lives with his wife Jane Marie Chismo at 1038 South Frederick Street, Arlington, Virginia #911. No phone. At present he is unemployed.

STATEMENT:

About 9 or 9:30 I left home. I went from there to Miss Lee's to pick up some money for some work I did there earlier in the day. On the way back I stopped in a tavern. There I had two beers and met this boy, Robert. I don't know if he said it was Robert or Bobby. Then about the time I finished my second beer he asked me if I had a car I told him yes. He asked me would I bring him to Washington if he paid me and filled my tank with gas. Then I told him yes but I had to go by home first. When I went home and went into the house and said something to my wife, I told her I was going to take this boy home, I don't know if I told her that I was taking him to D.C. or just taking him home. I told her I'd be straight back. I got in the car and drove at his direction. He brought me over by a short cut, over to Glebe Road and to Lee Highway to the street where I was arrested. He had me stop where I double parked he told me to wait on him that he would be right back he had to get some money. I waited double parked about five or ten minutes,I thought it would be better if I parked better so I pulled to the first vacant spot and walked back to look for him. In the process of looking for him I was arrested.

Q: Did you Rape anyone on August 24, 1973 or at any other time?
A: No.

Q: Where were you when the police arrested you?
A: I was on the street. The subject I was looking for went through a white gate and this is the time I was double parked when I parked my car I waited about 20 minutes and then I went to see if I could find him. I went through the white gate and there was two apartment buildings. So I went to the one on the left first looking for a mailbox with a name on it and then I came out the back entrance. Then I went over to the other building and looked around. I came out a little alley. That's when I was arrested.

Q: Did you have the rope in your rear pocket, if so what was it for?
A: Right, the rope I had to tie some material on my car.

Q: You have been advised of your rights and told what you were charged with. Is this statement given of your own free will, no promises or threats were made to you about giving same and it is true to the best of your knowledge?
A: Yes.

Typed by R. Sedgewick End 2:00 AM

Mack Chismo
Mack Chismo

Crime Laboratory Report

TO: Chief
Metropolitan Police Department
Washington, D.C. 20001

August 30, 1972

Attention: Inspector Thomas F. Mert
Acting Assistant Chief of Police
Technical Services Bureau

This examination has been made with the understanding that the evidence is connected with an official investigation of a criminal matter and that the Laboratory report will be used for official purposes only, related to the investigation or a subsequent criminal prosecution. Authorization cannot be granted for the use of the Laboratory report in connection with a civil proceeding.

RE: Mack Chismo , Suspect
Janice Martin, Victim
RAPE

Your No. MCL 16443-72
SM 72-501 OOR 402-214

Lab. No. PC-J0929 0I NS

Examination Requested by: Addressee

Reference: Letter 9-1-73

Examination Requested: Chemical Analyses - Microscopic Analyses - Miscellaneous

Specimens: Personally delivered by Officer Paul M. Angell Jr. on 9-2-73.

Q1	Sheet (1)
Q2	Pillowcase (2)
Q3	Shirt (3)
Q4	Rubber ball (4)
Q5	Sock (5)
Q6	Panties (6)
Q7-Q10	Rope from bedroom (7)
Q11	Rope from ladder (8)
Q12-Q15	Rope from living room (9)
Q16	Towel (10)
Q17	Slacks (11)
Q18	Belt (11)
Q19	T shirt (12)
Q20	Undershorts (13)
Q21	Scissors (14)

Q22	Left tennis shoe (16)
Q23	Right tennis shoe (15)
Q24-Q26	Rope (17)
Q27	Boy Scout hatchet (18)
Q28	Hatchet (19)
Q29	Fibers (20)
Q30	Pubic hair combings from suspect (21)
Q31	Pubic hair combings of victim (31)
Q32-37	Photographs of shoe prints (32)
Q38	Rope (17)
K1	Pubic hair clippings from suspect (22)
K2	Moustache hair clippings from suspect (23)
K3	Chest hairs of victim (24)
K4	Stomach hairs of victim (25)
K5	Arm hairs of suspect (26)
K6	Leg hairs of suspect (27)
K7	Head hairs of victim (28)
K8	Head hairs of victim (29)
K9	Pubic hairs of victim(30)

Also submitted: Negatives and photographs

Result of Examination:

Group "A" human blood was identified on specimens Q1 and Q2. No blood was found on Q6, Q16 through Q18, Q20, Q27, or Q28.

Semen containing spermatopes, male reproductive cells was identified on Q1 and Q17. Specimens Q2, Q8, Q16, Q18 and Q20 were examined for the presence of seminal stains; however, none were found. The identified semen was unsuitable for conclusive grouping purposes.

A single Negroid hair fragment which possesses too few individual microscopic characteristics for comparison purposes or body area determination was found on Q8.

A single body hair which has primarily Caucasian racial characteristics was found in the pocket of Q17. This hair is too limited in individual microscopic characteristics for comparison purposes.

No Negroid hairs were found on Q1, Q2, Q6, and Q16 or in Q31.

No Caucasian hairs were found on Q19 and Q20 or Q30.

No hairs were found on Q4, Q5, Q18, Q21 through Q23, Q27 and Q28 or in Q29.

No transfer of textile fibers were detected between the suspect's clothes and the victim's clothes or between the suspect's clothes and the victim's bedding.

Specimen Q29 consists of gray synthetic fibers which are unlike the fibers composing the suspect's and the victim's clothing.

No fibers were found on Q21.

Specimens Q7, Q8 and Q11 are alike in composition, construction and color and could have originated from the same source.

Specimens Q9, Q10, Q12, Q13, Q14 and Q15 are alike in construction, composition and color and could have originated from the same source.

Specimens Q24, Q25, Q26 and Q38 are alike in composition, construction and color and could have originated from the same source.

Specimens Q7, Q8 and Q11 are different from specimens Q9, Q10, Q12 , Q13, Q14 and Q15 and specimens Q24, Q25, Q26 and Q38 and did not originate from the same sources.

Specimens Q9, Q10, Q12, Q13, Q14 and Q15 are unlike specimens Q24, Q25, Q26 and Q38 and did not originate from the same source.

Due to fraying, the ends of specimens Q7 through Q15, Q24 through Q26, and Q30 are unsuitable for matching purposes.

The impression in the photographs, Q32 through Q37, are the same design as the soles of the shoes, Q22 and Q23. Due to the lack of sufficient identifying characteristics in the photographs it was not possible to definitely determine whether the shoes, Q22 and Q23, made these impressions.

The submitted evidence is being temporarily retained in the Laboratory until called for by your representatives.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Human Resources

MEDICAL EXAMINATION OF ALLEGEDLY SEXUALLY ASSAULTED PERSONS

PLEASE FOLLOW INSTRUCTIONS ON REVERSE SIDE

I. Identifying Information:

1. Name: Janice Martin
2. Birth Date: 9-21-46 3. Age: 25
4. Sex: F 5. Race: W
6. Address: 1607 - 31st Street, N. W.
7. Phone: 965-2310
8. Alleged Assault: Date 8-24-73 Time 3:30 a.m.
9. Police Notified: Date 8-24-73 Time
10. Medical Exam: Date 8-24-73 Time
11. Hosp. (Check) DC Gen. Children's Other X Name Georgetown University

II. General Physical Exam:

	A. HEAD	B. FACE	C. NECK	D. CHEST	E. ABDOMEN	F. BACK	G. ARMS	H. LEGS
1. Bruises		X	X					
2. Lacerations								
3. Blood								
4. Fractures								

Description: 4 circular band-like reddish marks on both wrists and ankles

Does exam show medical evidence of injuries suggestive of recent violence? Yes X No

III. Gynecological and/or Anal Exam:

	A. PERINEUM	B. HYMEN	C. VAGINA	D. CERVIX	E. ANUS
1. Bruises	--	--	--	--	
2. Lacerations	--	--	--	--	
3. Blood		--	--	--	

Description: No abrasions, bruises or lacerations on perinium, vulva, vagina, cervix or anal region

Does exam show medical evidence in or around vagina or anus suggestive of recent penetration? Yes No X

IV. Mental Health Evaluation:

	YES	NO
1. Apparently Normal	X	
2. Lethargic		
3. Crying		
4. Agitated		
5. Angry		
6. Verbose		
7. Hysterical		
8. Unconscious		
9. Other		

VII. Testing:

	DONE	NOT DONE	VAG	ANAL	RESULTS
1. Sperm	X		X		
2. Gonorrhea					
3. Syphilis					

VIII Treatment:

	DONE	NOT DONE	TYPE &/OR RESULTS
1. Vaginal Cleansing			
2. Prophylaxis			
3. Medication			
4. X-ray			
5. Suturing			
6. Hospitalization			
7. Other			

V. Additional Observations or Remarks:

VI. Medical Evaluation:
In your opinion is the evidence above compatible with?

	YES	NO	UNABLE TO DETERMINE
1. Vaginal Intercourse			X
2. Anal Sodomy			
3. Forced Vaginal Intercourse			
4. Forced Anal Sodomy			

IX. Instructions for Follow-up

	GIVEN
1. Oral	
2. Written	

I hereby authorize use of this report and any other report incidental thereto by the Department of Public Health and the Metropolitan Police Department of the District of Columbia for official purposes.

Janice Martin
SIGNATURE OF PATIENT

SIGNATURE OF PARENT OR GUARDIAN OF MINOR

E. R. Lowery, M.D.
SIGNATURE OF EXAMINING PHYSICIAN

FORM CHECKED BY MEDICAL OFFICER

George A. Wood (PLC)
SIGNATURE OF REPRESENTATIVE OF METRO. POLICE DEPT.

Original to Police Representative
Copy to Hospital or Physican

DHR 112 4/71

Week Two: Day 9
TOURS OF FACILITIES

At this point PDS's schedule breaks from the *Chismo* case for tours of the detention centers and the police department. (Because PDS conducts its training of new staff yearly in September, Labor Day interrupts the schedule. This is represented on the chart by having the following day appear as an "open" day.) Prepare a list of items that trainees should pay particular attention to during their observations.

To prepare for subsequent sessions, trainees are provided a copy of the Chismo Prosecution Report as well as the general exercise materials noted in the overview.

METROPOLITAN POLICE DEPARTMENT WASH., D.C.

PROSECUTION REPORT

PD FORM 163 REVISED 3/70

1. PROSECUTOR'S CHARGES

Pros's Name Date

2. COMPLAINT NO. ▶ 402-214

3. I.D. NUMBER ▶ 263615

4. ARREST NO. ▶ 2D-8916-8915

8. DEFENDANT'S TRUE NAME (Last, First, Middle) ID ONLY

9. DEFENDANT'S NAME (Last, First, Middle): Chismo, Mack

12. SEX: ▶ M | 13. RACE: ▶ N | 14. DATE OF BIRTH: ▶ 8/7/29

5. T. T. NO.

10. ALIASES OR NICKNAME

15. CITY AND STATE OF BIRTH: Austin, Texas

6. CID NUMBER: SX 72-581

11. ADDRESS ZIP CODE: ▶ 1038 South Frederick, Arlington, Virginia

16. TIME IN THE DISTRICT OF COLUMBIA: Visits periodically

7. SOC. SEC. NO.

17. ▶ CO-DEFENDANTS: NUMBER _____ IF MORE THAN 4 CO-DEFENDANTS, LIST NAME & ADDRESSES OF OTHERS IN STATEMENT OF FACTS SEC.

18. NAME, ADDRESS AND ZIP CODE

1

2

3

4

19. POLICE CHARGE(S): ▶ Rape and B-1

20. LOCATION OF OFFENSE: ▶ 1607 31st Street, N.W. (Basement) | DATE: ▶ 8/24/73 | TIME: ▶ 0430 Hrs

21. LOCATION OF ARREST: ▶ F/1609 31st Street, N.W. | DATE: ▶ 9/6/73 | TIME: ▶ 2200 Hrs

22. ARRESTING OFFICER'S NAME, RANK, BADGE NO. & UNIT OR AGENCY: ▶ J.D. Lee

23. ASSISTING OFFICER'S NAME, RANK, BADGE NO. & UNIT OR AGENCY: ▶ H. R. Mullen

24. DEFENDANT ADVISED OF RIGHTS

DATE	TIME	LOCATION	ADVISING OFFICER'S NAME	RANK	BADGE NO.	UNIT
9/6/73	0115 Hrs	F/1609 31st St.	H.R. Mullen	Off.	2707	2D-Tact

25. WITNESSES: FOR ADDITIONAL WITNESSES USE STATEMENT OF FACTS SECTION

	NAME (Last, First & M.I.)	ADDRESS	ZIP CODE	AGE	HOME PHONE	BUSINESS PHONE
1 ▶	Martin, Janice	1607 31st Street, N.W.		25	965-2310	N/A
2 ▶						
3 ▶						
4 ▶						

26. ▶ PROPERTY STOLEN (✓ IF YES ☐) AND RECOVERED (✓ IF YES ☐) /OR ITEMS OF EVIDENCE

	(a) IDENTIFICATION	(b) HOW, WHERE, WHEN RECOVERED	(c) FROM WHOM	(d) ✓ IF STOLEN
1				
2				
3				
4				

27. WORK HISTORY (INCLUDE PRESENT JOB, IF ANY ON LINE 1)

	FROM - DATES - TO		EMPLOYER	ADDRESS	BUS. PHONE	OCCUPATION
1	Present		Self Employed			Carpenter
2	5/72	7/72	Agnew Construction Co.	5500 Columbia Pike	Unknown	Carpenter
3						

28. ARREST RECORD SUMMARY

1 No Local 2

3 4

5 6

29. M.O. (Weapons or instruments used, Hangouts and Habits): Smokes, and drink vodka.

30. RIGHT THUMB PRINT

PAGE 1 TO I.D. - PAGE 2 & 3 TO PROSECUTOR IF JUVENILE TO Y.D. - PAGE 4 OFFICER - PAGE 5 (YELLOW) DISTRICT COPY.

PAGE 1

REVERSE CARBON AND FILL IN REVERSE SIDE OF THIS FORM

CHECK LAST COPY FOR LEGIBILITY BEFORE TURNING IN REPORT

S-23983/73

REVERSE CARBON

31. FAMILY AND RELATIVES

RELATIONSHIP	AGE	NAME (Last, First & Mi)	ADDRESS ZIP CODE	PHONE NUMBER
Wife	32	Chismo, Jane	1038 S.Frederick Arl. Va.	None
Brother	31	Chismo, Mo	Army	
Sister	36	Chismo, Sally	104 Finley St. Robina Ill.	Unknown

32. FRIENDS AND ASSOCIATES

NAME (Last, First & Mi)	AGE	ADDRESS ZIP CODE	PHONE NUMBER
Camblin, Cleophus	40	1039 W. North Ave. Mil. Wis.	FR-43211

33. ATTACHMENTS BROUGHT TO PROSECUTOR: (Check)

- [ ] CONTINUATION REPORT
- [XX] ARREST REPORT
- [ ] OFFENSE REPORT
- [ ] SUPPLEMENT REPORT
- [ ] SEARCH WARRANT
- [ ] ARREST WARRANT
- [ ] LOCAL RECORD
- [XX] F B I RECORD
- [ ] STATEMENTS
- [ ] CERTIFICATE OF NO GUN LICENSE
- [ ] CITATION

34. DRAFT STATUS: NO. & ADDRESS OF LOCAL DRAFT BOARD
Unknown

35. SELECTIVE SERVICE NO. OR ARMED FORCES SERIAL NUMBER
Unknown

36. MILITARY EXPERIENCE: BRANCH OF SERVICE & DATES FROM - TO
Army 1946-1948

37. DATE OF INDUCTION: 1948

38. DATE TYPE OF DISCHARGE: 1948 Honorable

39. STATEMENT OF FACTS Give a brief statement, in your own words, of the facts surrounding the offence and the arrest. Indicate oral or written statements made by the defendant(s). Use Continuation Form PD 202 A for additional space. Note present condition of any injured person(s). TELEPHONE CALL MADE [ ] YES [ ] NO

40. FOR PROSECUTORS USE

The c/w Janice Martin W/F/25 yrs, of 1607 31st St. N.W. reports that on 8/24/73 about 3:30 AM while asleep in her bed that she was awaken at which time an unk. male was standing over top of her and at this time the subj. placed his hand over her mouth and the other hand held a hatchet and a pair of scissors. The subject made the compl. lie on her belly, on the bed, tied her up with rope spread eagle. The subject then had sexual intercourse with the compl. The subject also committed oral sodomy on the compl. He then had sexual intercourse again.

The lookout of the subject was as follows: A Negro male, thirties, 5'11" to 6'1, med. to stocky build, very muscular, dark skinned, short hair, straight nose not too wide, maroon golf shirt, blk pants and sneakers.

On 9/6/73, Officers Mullen and Lee of 2D-tact were assigned to a plant at 16-0 block of 31st St. N.W. The plant was for the possible return of a rapist who had committed several offenses in that particular area. At approx. 100 hrs. Off. Mullen observed a N/M coming out of small alley beside 1607 31st St. N.W. The officers approached the subject and identified themselves. The subject was perspiring and seemed overly scared when questioned about his doings in the area. In the subject's left rear pocket, Off. Mullen removed 4 pieces of approx. 3 feet rope. In subject's right front pocket, Off. Mullen removed a Dalmo credit card with c/w's name and address.

Due to the fact that the subject matched the lookout of the alleged rapist in the area: A Negro male, 43 years, 5'11", med. build (165 lbs) muscular, med-drk skin, short hair, straight nose not too wide, wearing blk tennis shoes. Also, because the subject was carrying in his pockets the above described articles, the subject was placed under arrest for the rape. Advised of his rights on the scene and transported to 2D and then on to the Sex Section of MPD.

41. FINAL DISPOSITION

42. SIG. OF OFFICER MAKING STATEMENT	BADGE	RANK	UNIT	DATE	43. SIGNATURE OF REVIEWING OFFICIAL	DATE
	2707	Off	2D	8-13-73		

PAGE 1

REV. 2-68

METROPOLITAN POLICE DEPARTMENT
WASHINGTON, D. C.
CONTINUATION REPORT

COMPLAINT NUMBER	ARREST NUMBER
402-214	2D-8916-8915
UNIT: 2D-Tact	T T NUMBER

ITEM NO. 1

The subject refused to make a statement and phone call.

Mobile Crime responded to the Sex Section and the subject's 4 pieces of rope, blue s/s/shirt, blue pants (cut-off at the knee), a blk belt, a pair of tennis shoes, a watch with band, a pair of mens jocky shorts. Mobile Crime Lab #16443.

Recovered from the subject's auto, 1968 Mustang, was a Sears Kenmore Sewing Machine and woman's pocket book.

Upon his arrest, CW viewed subject and made positive identification.

Credit card identified on the scene.

Sex Section Case #SX 72-681.

SIGNATURE OF REPORTING OFFICER	BADGE	SUPERVISOR APPROVING	REVIEWER	NO.
	2707			

PAGE 2 OF PAGES

OVERVIEW OF WEEK III

OVERVIEW OF WEEK III

	TOPICS	TRAINING TECHNIQUES	EXERCISE MATERIALS	BACKUP MATERIALS
Day 10	Attacking the State's Evidence: Search and Seizure	Review of case law; Lecture and Discussion	None	None
Day 11	Topics continued	Conduct mock motion to suppress evidence	Miranda Warning Form (for days 12-13)	Role Plays: Officer J.D. Lee and Officer Mullen
Day 12	Search and Seizure; Confessions	Critiques of Motions; Evaluation checklist of points to be covered	None	Checklist of points to be covered in motions to suppress (prepared locally)
Day 13	Topics continued	Applied previous materials to *Chismo* case; Conduct mock motions	None	Defendant Statement; Role Play: Detective Sedgewick;Miranda Warning Form (for Detective Sedgewick)
Day 14	Confessions; Identification	Critique of previous day's motions; Lecture and discussion; Assigned to patrol cars	Investigative Report re: Officer Mullen	None

Week Three: Day 10
ATTACKING THE STATE'S EVIDENCE: SEARCH AND SEIZURE

The third week of training begins the longest segment devoted to a single topic, that of attacking the state's evidence. The first session is a lecture/discussion class in which senior attorneys summarize the major points involved under the general heading of search and seizure. The *Chismo* case is not directly involved, but the points covered during the session lead into the next day's topic, which is the motion to suppress.

This day's session will require considerable preparation by senior staff. This session is one of several which can be and should be prepared substantially in advance of the course -- under your direction and with the assistance of law students, if possible.

Week Three: Day 11

ATTACKING THE STATE'S EVIDENCE: SEARCH AND SEIZURE (continued)

Search and seizure continues into the next day, now applied directly to the *Chismo* case. The attorneys have been assigned the preparation of a motion to suppress evidence in the case and are expected to be able to conduct such a motion. The back-up materials to be used are instructions to the actors who will portray the arresting officers, "Harold Mullen" and "J.D. Lee." In addition to the materials setting forth what they did, they will need to be briefed on how to defend their actions. They should also be familiar with other prosecution documents, e.g. The Prosecution Report and the Janice Martin statement.

The points to be covered are whether the arresting officers had probable cause to arrest, based on the evidence which they found on the defendant (the strands of rope), and whether their search of the defendant's car was legal.

PD 47
REV. 8/73

METROPOLITAN POLICE DEPARTMENT
WARNING AS TO YOUR RIGHTS

You are under arrest. Before we ask you any questions, you must understand what your rights are.

You have the right to remain silent. You are not required to say anything to us at any time or to answer any questions. Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we question you and to have him with you during questioning.

If you cannot afford a lawyer and want one, a lawyer will be provided for you.

If you want to answer questions now without a lawyer present you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

P-771

WAIVER

1. Have you read or had read to you the warning as to your rights? _____
2. Do you understand these rights? _____
3. Do you wish to answer any questions? _____
4. Are you willing to answer questions without having an attorney present? _____
5. Signature of defendant on line below.

_____

6. Time _____ Date _____
7. Signature of officer _____
8. Signature of witness _____

J-4730-74

Week Three: Day 12

ATTACKING THE STATE'S EVIDENCE: SEARCH AND SEIZURE (continued)

CONFESSIONS

Search and Seizure (continued)

The morning of this day is spent in critiques of the trainees' motions to suppress and their conduct of those motions. If videotape was used on the previous day, it is played back at this time (rather than interrupting the conduct of the suppression session itself).

As Training Director you should prepare a checklist of points to be covered in a motion to suppress, so that this list can be the basis for the evaluation of the trainees' motions, as well as a basis for their future preparation of such motions. Having an explicit set of criteria against which to compare their own performance, particularly if they are able to view their own performance, is the most effective and constructive critiquing technique you can use: it helps the trainee develop both his or her own internal standards and an awareness of strengths and weaknesses in both preparation and presentation.

Confessions

The afternoon of this day moves on to the topic of confessions. Like the class on search and seizure, this one on confessions consists of a series of presentations by senior attorneys on the major issues under the topics of notification of rights, waiver, and voluntariness. These, too, are best prepared well ahead of time, with plenty of advance notice to senior staff. In both the search and seizure and confessions preparations, law students can be valuable assistants, if their schedules make it convenient to use their services.

Week Three: Day 13
ATTACKING THE STATE'S EVIDENCE: CONFESSIONS
(continued)

The next day's session on confessions applies the previous day's presentations to the *Chismo* case. The back-up materials used are the defendant's statement, made on the morning of his arrest, and briefing instructions to "Det. Robert Sedgewick, Sex Section," on the circumstances surrounding his interrogation of the defendant. The assignments to the attorney are to prepare and conduct motions to suppress. You will need, therefore, someone to play Det. Sedgewick. He does not need to be very experienced as an actor; a current staff attorney will probably fill the bill, if you cannot secure the services of a detective.

Week Three: Day 14

ATTACKING THE STATE'S EVIDENCE: CONFESSIONS (continued)

IDENTIFICATION

The morning of the last day of the third week is given over to a critique of the previous day's motions. Here, again, an explicit set of criteria against which to evaluate the trainees' performances is essential to their being able to learn from their experiences. These criteria should be distributed as part of the assignment materials. You will have to generate these yourselves, since PDS has not formalized its own criteria yet.

The afternoon session is the first class in identification. Another lecture/discussion session, this class will have to be prepared in advance by senior attorneys on the model established above for search and seizure and confessions. We have included in this package references on identification, which you should update and modify accordingly.

This day's session continues into the night with the trainees riding in police cars. Friday night is suggested due to the higher volume of activity for police officers on that night.

Exercise Material for Distribution on Day 14

Public Defender Service

MEMORANDUM

TO: [Defense Attorney]

FROM: Student Investigator

SUBJECT: *State v. Chismo*

On September 12, 1973, I attempted to interview Office Mullen, pursuant to your request, in connection with this case. I met Officer Mullen at the Second District Headquarters as he was leaving his duty assignment. Officer Mullen was very reluctant to talk to me and stated that I should get whatever I want to know from the District Attorney. I continued to press him, however, and he did provide the following information:

1. He did not in any way suggest to Janice Martin that she should identify the defendant. He says that in fact she was reluctant to come out and view him, and that he explained to her that it was a routine matter and would require her cooperation for only a very short period of time.

2. The defendant was in custody when he was displayed to her, and there were some other police officers around (he does not know how many), but the officers did not make the defendant do or say anything to suggest an identification.

3. Lighting was good at the time of the confrontation, and Janice Martin was positive in her identification. She said something like "yes, it's him, I'm sure," and then they took her back to the house.

4. He would not tell me anything beyond that and said he will tell his story on the stand. Good Luck.

OVERVIEW OF WEEK IV

OVERVIEW OF WEEK IV

	TOPICS	TRAINING TECHNIQUES	EXERCISE MATERIALS	BACKUP MATERIALS
Day 15	Attacking the State's Evidence: Identification	Conduct role play of a motion to suppress the identification	Hypotheticals for motions for judgement of acquittal (for day 16)	Memo to Office Mullen re: Testimony at Hearing to Suppress Identification; Role Play: Janice Martin (Jencks Hearing)
Day 16	Identification; Sufficiency of the State's Case	Critique of previous role play; Lecture and discussion	None	Criteria checklist for assessing preparation and performance (prepared locally)
Day 17	Competency and Insanity	Lecture/Discussion; Tour of Detention Facility	Blank copy of court form ordering examination for competency; Memorandum re: Competency (sample) (prepared locally)	None
Day 18	The Trial: The Jencks Act	Lecture/Discussion; Application of *Chismo* case; Role play	Janice Martin Statement & Notes by Officer Corcoran (for same day); Investigative Report re: Jack Hammer (for day 19)	Role Play: Detective Corcoran; Role Play: Janice Martin (Testimony in *State v. Chismo*)
Day 19	The Trial: Preparing Witnes Witnesses to Testify-Direct Examination	Role play; Direct and cross-examination	Memo re: Chismo's Accomplice (Seidel) Bob Seidel Materials (for day 20)	Role Play: Jack Hammer

Week Four: Day 15

ATTACKING THE STATE'S EVIDENCE: IDENTIFICATION (continued)

The assignment for the day is to prepare and conduct a motion to suppress the identification of the defendant by the victim, Janice Martin. As in the other sessions on motions to suppress, this one is played out -- videotaped, if possible.

In addition to the trainees, the roles to be filled are the presiding judge, the assistant district attorney (who has already been brought into the case by this time in previous sessions), Janice Martin, and Officer Mullen (who conducted the show-up). Mullen should be prepared by reading the Memo to Mullen regarding his testimony at the hearing to suppress identification.

Exercise Material for Distribution on Day 15

Public Defender Service

MEMORANDUM

TO:

FROM: Training Director

SUBJECT: MJOA Class

---

1. In a Burglary II case, the only evidence against the defendant is his fingerprint on the inside of the door to the burglarized premises, a private house. The print is just below a broken window in the front door. Entry was apparently made through the door. The owners and residents of the house, a husband, wife, and two teenage boys, were away for about ten days, and they discovered the burglary when they returned.

Think about the sort of questions which might be asked on cross-examination to lay the groundwork for a half-way plausible motion for a judgment of acquittal, and be prepared to argue such a motion based on the assigned cases dealing with fingerprint evidence:

How would you argue for the government?

2. In an indecent liberties case the government's evidence indicated that the defendant was in a carryout shop spending about an hour trying to find a young girl who would do some work for him. After approaching several girls, one, 13 years old, agreed to go off with him. Several witnesses saw the two of them walk off together through a playground. Later that day the girl returned home, saying nothing about the incident. The next day, after school, she told her boy friend that the defendant had raped her. He mentioned it to an adult who called the police. The hospital report indicated that the complainant was not a virgin at least several times over, and that there was no evidence of recent intercourse, forcible or otherwise.

Using the cases, how would you argue a motion for a judgment of acquittal?

What would you argue for the government?

3. In an armed robbery case, the government's evidence showed that two men entered a liquor store at the same time. Both were wearing hats and sunglasses. One, the defendant, approached one of the two cashiers, while the other person approached the second cashier. The second cashier testified that he was immediately apprehensive and reached for his hand gun behind the counter. The man in front of him reached into his pocket and started to

pull out what looked like a gun. The cashier then pulled his gun and started shooting. The first cashier also pulled a gun and started shooting. The defendant and the other man both ran out of the store.

How would you argue a motion for a judgment of acquittal for the defendant?

4. The government's evidence in a prosecution for armed robbery and assault with intent to kill showed that the defendant, along with three other men robbed one Miller at gunpoint. They fled in a green 1968 Chrysler. A description of the car was given to the police, and approximately 10 minutes after the robbery, the police saw a car of that description standing in an alley with the engine running. Several people were in the car. The police, in uniform, got out of their car with guns drawn and approached the Chrysler. The police then asked the occupants to come out with their hands up. One person came out the front seat, passenger side, then suddenly started to run. Just then a co-defendant pushed open the back door and shot a cop standing about nine feet away with a sawed-off shotgun. The cops then opened fire. When the smoke had cleared, the defendant was taken from the car. He was in the back seat, and there was a pistol at his feet. The testimony of the police officer witnesses was that the defendant had simply sat still during the entire incident. He was, however, along with the others in the car, identified by the victim as having committed the armed robbery.

Argue a motion for a judgment of acquittal on the charge of assault with intent to kill the policeman.

Argue for the government.

Week Four: Day 16

ATTACKING THE STATE'S EVIDENCE: IDENTIFICATION (continued)

SUFFICIENCY OF THE STATE'S CASE

The morning is spent in critiquing the previous day's motions, which by now should have become a familiar process. Just remember that you have to prepare the criteria for assessing preparation and performance.

The afternoon is spent on the problem of attacking the sufficiency of the state's case. On the previous day each of the trainee-attorneys was given a hypothetical case and is required during the afternoon session to argue for acquittal or for the state. The instructor acts as judge in the hearing of these arguments. This session is unrelated to the *Chismo* case.

Week Four: Day 17
COMPETENCY AND INSANITY

The issues of competency and insanity do not relate to the *Chismo* case, but they are introduced at this point because they properly fall under the same general rubric of pretrial procedures as do assembling the facts and attacking the state's evidence. (Introducing them at this point also serves to give the trainees "time out" from the *Chismo* case.)

PDS uses the lecture/discussion method for these topics. We have included in this package a memorandum prepared by PDS staff which can perhaps serve as a starting point for your own preparation of a summary of the issues involved. One item missing is a blank copy of the appropriate court form ordering an examination to be held for the purpose of establishing competency. You should obtain one from the court in your jurisdiction and include it in your trainees' materials.

The class might be followed by a tour of the detention facilities for persons being examined, with the institution's staff indicating the procedures they follow in determining competency. As with the on-site visits, a checklist of items trainees should pay particular attention to during observation should be handed out.

Exercise Material for Distribution on Day 17

Public Defender Service

MEMORANDUM

May 22, 1973

TO: Staff Attorneys

FROM: J. Patrick Hickey, Deputy Director

RE: Competency -- Law and Tactics after Jackson v. Indiana (Summary of Staff Meeting, May 16, 1973)

I. Basic Law

In Jackson v. Indiana, 406 U.S. 715 (1972), the Supreme Court held that a defendant committed as incompetent can be held only "the reasonable period of time necessary to determine whether there is a substantial probability" that he will attain competency "in the foreseeable future." The following points are noteworthy:

1. The "reasonable period of time" must vary depending on the nature of the disabling condition. Thus, a person found incompetent because of organic brain damage, permanent amnesia, or permanent physical disability has a strong case that there is only a brief period which could be thought reasonably necessary to make a prognosis. The position of the United States Attorney's Office that six months is "a reasonable period" obviously cannot be applied in every case.

2. Since the Government is seeking the commitment of the individual, the burden is on them to show a "substantial probability" that the defendant will become competent. A doctor who testifies to such a substantial probability should be carefully interrogated concerning the normal progression of the particular mental illness involved; the customary method of treatment of such an illness; the treatment to be utilized with this defendant; the statistical likelihood of recovery and the precise extent of recovery; and perhaps most important, the standards by which the recovery will be judged. It is imperative to bring out in detail the factors making the defendant presently incompetent and the specific factual predictions that the doctor is making with regard to his future condition. Thus, a homicide defendant found incompetent because he insists on defending on the grounds of a divine command to kill has a substantial probability of attaining competency only if the doctor can state that the patient will give up this delusion and will be able to rationally evaluate the potential factual defenses in the case.

From the client's point of view, there may be a real possibility that he will not regain competency in the foreseeable future and moreover that civil commitment is not obtainable because of lack of evidence of dangerousness. Note the court's view in Jackson that "the pending criminal charges" are insufficient to establish dangerousness. (Slip op. p. 12)

The Supreme Court in Jackson notes other state procedures, (e.g. New York, Massachusetts and Wisconsin) and the recommendation of the Model Penal Code that the attorney should be allowed to present issues capable of determination without the participation of the defendant even though the defendant is incompetent. Thus, an attack on the indictment, a motion to suppress, or other legal objections arguably should be allowed to be presented even though the defendant is incompetent. Indeed, Massachusetts and some other states allow a "free trial" of the charges at which the defendant may be acquitted but not convicted because of his incompetent status. At any rate, there should at least be some probable cause determination that there is sufficient evidence to warrant holding the defendant for a determination of competency. See the language (slip op. pp. 66-67) in the recent D.C. Circuit opinion, Sullivan v. Murphy, No. 71-1632, 4/16/73, on the constitutional right to a determination of probable cause, and In re Barnard, 147 U.S. App. D.C. 302, 455 F.2d 1370 (1971),recognizing such a right for persons hospitalized on an emergency basis under D.C. Code §§21-521 et seq.

II. Practical Approaches to the Legal Test of Competency

We are all too familiar with the basic competency standard laid down in Duskey v. United States, 362 U.S. 402 (1960) which requires that a defendant, to be competent, must have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding," and "a rational as well as factual understanding of the proceedings against him." Because that language is fairly imprecise, it may be helpful to focus on problems of competency by asking yourself what you expect of your client during the pending case. Specifically, it if appears possible that a guilty plea may be in the client's best interest, will he be able to rationally evaluate that possibility, or will an irrational compulsion to "speak his piece" compel him to insist on trial so that he can take the stand and testify? In a case where the defense on the merits is weak and a potential insanity defense exists, can the defendant evaluate in a reasonable fashion whether or not to impose the insanity defense, or is his fear of being branded "insane" so irrational that he cannot adequately consider that possibility? Again, where a defendant is pathologically unable to recognize

that he is mentally ill and needs treatment, it may well be that he is unable to evaluate the relative desirability of interposing an insanity defense and receiving treatment at St. Elizabeths Hospital. Other traditional tests include the ability of the defendant to relate the circumstances of the offense or recall potential witnesses in his behalf; his ability to follow testimony at trial and indicate to his attorney mistakes or falsification; his ability to testify in his own behalf if that seems appropriate; and his ability to generally participate in the trial, even if only by sitting through the trial without outbursts or other inappropriate behavior. Some suggestions about the type of questions which the attorney should ask himself or should put to the doctor at the competency hearing may be found in an article at 127 Amer. J. Psychiat. 1225 (1971), and in the proposed mental observation order which Marilyn Cohen and I drafted earlier this year. In an appropriate case, expert testimony should be elicited concerning the effects on mental functioning of such items as alcohol, especially with a chronic alcoholic with organic brain damage, narcotics [see Grennett, 131 U.S. App. D.C. 202 (1968)]; amnesia [see Wilson v. United States, 129 U.S. App. D.C. 107 (1968) and Bradley v. Preston, 263 F. Supp. 283 (D.D.C.1967)]; or tranquilizing medicines received during the course of hospitalization [the standard medical reference on the composition and effect of drugs, including a listing by trade name, is the Physician's Desk Reference (PDR)].

III. Procedures During St. Elizabeths Examination

We discussed briefly the desirability of making contact with the examining physician at St. Elizabeths during the period of a competency examination. There are several potential benefits to be gained, including (a) an opportunity to sell your position to the examining doctor before he gets committed in writing to a contrary position; (b) keeping track of the nature and extent of the examination as it occurs; and (c) building a record of assistance offered to the doctor, which may be useful to establish the inadequacy of the mental examination. Jane Lamb pointed out that the doctors on the ward are the ones to contact, and some greater opportunity may exist for "missionary work" with them since they may be either residents or Public Health Service doctors doing their obligatory service, rather than full-time staff members infected by the St. Elizabeths institutional bias. Although social work assistants at the Hospital will make some effort to interview family members, it is generally desirable to offer your assistance to the doctor in making particularly significant lay witness evidence about the defendant's mental status available. If the doctor fails to follow through on your offer, this can be effectively used at trial or subsequent hearings that you wanted the St. Elizabeths examination to fail and deliberately suppressed obviously relevant information from the doctor.

IV . Ethical Problems

The American Bar Association's Minimum Standards on the Defense Function state that the decision of what plea to enter is a decision to be left to the defendant (§ 5.2). However, there is language in the Code of Professional Responsibility which does not limit the defendant to the few basic choices outlined in the Minimum Standards. See, for example, in the Code of Professional Responsibility, Ethical Considerations 7-7, 7-8 and 7-12. In United States v. Collins, 139 U.S. App. D.C. 392, 433 F.2d 550 (1970), the D.C. Circuit considered a case where counsel moved for mental examination but revealed her client's opposition to the motion. The court made no criticism of the lawyer for filing such a motion, but found on the facts here there was no abuse of discretion by the trial court when it denied the motion for a mental examination, in light of the intelligence and understanding which the defendant demonstrated in response to inquiries from the court.

Many of the ethical considerations are discussed in an article by Bill Schaffer and Paul Chernoff in 10 Amer. Crim. L. Rev. 505, 512-23 (1972).

V. Undiscussed Issues

Mention was made of issues related to the problem of mental examinations and competency determinations, including:

(1) the effect of such examinations on the right to bail and the possibility of out-patient examinations referred to in Marcey v. Harris, 130 U.S. App. D.C. 301, 400 F.2d 772 (1968);

(2) the impact of the Fifth Amendment rights on the pretrial mental examination and how to advise a client about confessing his guilt to the doctor [see, e.g., McCormick, Evidence §134; Lee v. County Court, 27 N.Y. 2d 432, 267 N.E.2d 238, cert. denied, 404 U.S. 823 (1971)]; and

(3) the right to counsel during the mental examination process, especially at the staff conference [see, e.g., Thornton v. Corcoran, 132 U.S. App.D.C. 232, 407 F.2d 695 (1969)].

Week Four: Day 18
THE TRIAL: THE JENCKS ACT

The morning of this first day of trial practice training is devoted to a class on the Jencks Act, 18 U.S.C. §3500.

The afternoon applies the Jencks rule to the *Chismo* case. This requires the preparation of "Det. M.C. Corcoran" and the victim, Janice Martin, who makes her first appearance in the role plays at this point. Det. Corcoran took notes of his conversation with Janice Martin on the morning of the rape; his notes are reproduced here. Janice Martin later made and signed a statement which is included on the following pages.

The assignment for the trainees is to prepare for a hearing during which they will attempt to obtain all statements by Janice Martin to which the defense is entitled under the Jencks Act.

Office of the Sex Section
Metropolitan Police Department
Washington, D.C.
Monday, August 27, 1973
Time: 2:30 p.m.

Ref. Rape and Burglary I committed against Janice Martin, white female, 25 years old, of 1607 31st Street, N.W. Basement Flat, occurring about 3:30 a.m. by Friday, August 24, 1973, inside the above residence, by an unknown N/M mid 30's.

Statement of the Complainant Janice Martin, white female, 25 years, born September 21, 1946 in New York, New York, to Marsha (nee Smith) Martin and Thomas Martin. The complainant is single and lived alone in the basement of 1607 31st Street, N.W. She will be moving soon to 2803 Q Street, N.W. (temporary residence). The complainant is presently unemployed. Statement taken by PRC. Susan B. Moore in the Sex Section Office.

STATEMENT:

Last Thursday night, August 23, 1973, I went out at about 11:30 p.m. to a friend's house at 1220 1/2 31st Street, N.W. I left her house and got back home about 3:00 a.m. Friday morning. As soon as I got into the house, my dog started barking and I thought I heard some noises outside but decided that I was justimagining things. I went on to bed and fell asleep about fifteen minutes later but kept waking up because my dog kept barking. At one point, I was awakened by the bedroom door opening. I had the light on next to the bed and when I opened my eyes this Black guy was standing over me and capped his hands over my mouth and he had a hatchet and a pair of scissors in his other hand ready to swing down on my head. He told me to turn over and not to look at him. He told me that he wasn't going to hurt me. My dog was still barking and the guy told me to get up and put the dog in a closet or he would kill the dog. He had me walk in front of him and not turn around or look at him. While we were walking he tapped me on the shoulder with the hatchet so I would know he still had it and had better not be uncooperative. Then he had me lay face down on the bed after I put the dog in the closet and he tied my wrists to the headboard and my ankles to the legs of the bed. He tied me with some heavy cord that he had apparently brought with him. He was moving around the room there in back of me and then he started talking to me andtold me that he had been sent there because I didn't like black people and that he knew that I was a prejudiced white bitch. He went in that general vein for awhile and then he kept walking around the room. All of a sudden he came over to me and ripped off my underpants and started using his mouth on me. Before he started, though, I was able to break one of my hands loose and he hit me two times in the head with

his fist and then one time very hard with the hatchet. I had screamed when I got my hand loose and that's why he started hitting me. After I screamed he stuffed a tennis ball inside my mouth and pulled off my pillow case and gagged me with it. Then he made me get up on my knees and he put his penis in my vagina. After this he asked me if I would like it if he would undo the ropes before he left and I nodded yes. With the scissors he had he cut the ropes from the bed. Then he told me to get up and he put my nightgown over my head and he told me to walk into the living room. When we got into the living room he told me to pick up my purse and give him the money. He took the nightgown off my head for a second and then I looked in my wallet and it was empty. So then I looked into my checkbook and the money I had had in there was gone also. I figured he must have already taken it since I know I had it when I got home at about three o'clock (3:00)a.m. Missing from my wallet were a number of business cards, my driver's license, my automobile registration, my unemployment ID card, and $28.00 in cash. Then he put the nightgown back over my head and he said well you know you're going to have to do it again, and he made me lie down on the floor on my back with the nightgown over my face. He did the same things to me again. While all of this was going on he was talking to me about taking some of my things. He asked about my record player and I said for him to take it. I told him it didn't work but he said he thought he would take it anyway and fix it up. Then he told me that I was really basically a nice person and he didn't realize that he was going to be doing this to a person like me and he was sorry. He was just generally apologetic. Then he became angry again and threatened that if I ever told the police he would find me wherever I was and kill me with the hatchet. Then he said he might even consider giving me back my TV and sewing machine if I didn't go to the police. He said that he wasn't going to give them to me right then but that he would call me on Saturday and tell me where I could meet him to get the stuff back. He told me to just lie there and not to move for fifteen minutes. He went out once and apparently loaded some stuff into his car and then he came back in a minute and a half later (I was counting the seconds) and he said that he just wanted to see if I knew how to do what I was told to do. Then I heard the door close and a few seconds later I heard a car door slam and a car start up and drive away. It sounded like a newer car, American car, probably a heavy car, a sedan type. It had no unusual sounds and seemed to drive smoothly and start up easily. It sounded like it was parked right in front of the building. I

probably waited three or four minutes and then I got up and let the dog out of the closet and just sat there for a few minutes. I looked at the clock and it was 6:15 a.m. After a few minutes I called a friend and he told me to call the police right away. I was terrified about calling the police because of the threats, and I called another friend, who called the police for me. The police arrived about 7:35 a.m.

We discovered that he had gotten in by cutting the screen out of one of my living room windows. He had taken with him the hatchet and scissors (which I found out later were taken from the man's tools upstairs --Mr. Snyder). He also took my sewing machine: Sears Kenmore, Serial #1207; my 12-inch Panasonic portable TV (black and white), two tone grey in color, serial number unknown; my 1957 Emerson portable hi-fi set, which does not work. It had a red vinyl top with a white body and brown buttons. He also took my brown leather key case with some where around ten keys in it, including my house and car keys. Also stolen were my ID cards, which I have already described and about $28.00 in bills, and my pocketbook.

The guy who assaulted me was a Negro, in his 30's, about five feet eleven inches to six feet one, about medium to stocky build, very muscular, very dark-skinned, short hair, clean shaven. His nose was sort of straight and not too wide and his eyes were smallish. He head was squarish. There was an odor on his breath but I couldn't tell what it was. He was wearing a maroon golf shirt and a pair of black pants and sneakers.

Susan Moore
Susan M. Moore
Completed 3:50 p.m.

Janice Martin
Janice Martin

Detective Corcoran's Handwritten Notes

8-24-73

1220½ 31 ST NW.

came from friends
c/w got home at 3:00 AM (Dog started barking at 9:00 PM) went to bed. (Heard noises) 3:30 PM went to asleep. (Bedroom lamp was on) Hand over my mouth, N/M standing on c/w left with a antique hatchet and scizzors said he wasn't going to hurt me. Lying on stomach with face in pillow tied me spread eagle, s-1 brought own rope, to bed post (c/w put dog in closet) before tying where is your money c/w said it was in living room and asked for whiskey said don't have any.
He said he likes dope, it turns me on and makes me high.
(s-1 states that she didn't like Blk people thats why he was sent paid 200.00 to do this.) she attempted to free herself. shoved tennis ball inside of sock.

Detective Corcoran's Handwritten Notes

8-24-73

gash to head and bloody nose.
(back of head)
S-1 told her she was a smart ass
white bitch. He had vaginal intercourse,
"get on knees"
(never ejaculated) Packed up sewing
machine and he asked for money. He
felt sorry for me he cut ropes from
bed, brought me into living room and
put a nightgown over c/w head.
Still gagged. No money in purse.
He took drivers lic. and unemployment
I D card
(Don't call police or he would kill me)
had intercourse with her on (by hatchet
floor of living room took gag out
of my mouth before he had
intercourse. began getting apologetic
took record player (for his little
daughter - and good wife) said he
would call house between two and
six tomorrow if c/w would go to
where he wanted would give t.v. and
sewing machine back.
told me to stay on the floor and

Detective Corcoran's Handwritten Notes

8-24-73

give S-1 15 min to get away. left out front door and trunk slamming 6:00 AM (put det upstairs room for surveillence) S-1 then returned and left finally car start up.

description: N/M, 30's early 5'11" - 6'1" 170 lbs average bld. maroon cotton T shirt blk pants - sneakers? short curly hair, not afro. he didn't have no moustache. straight nose smallish eyes (quick glance) very dark comp.

1) sears kenmore #1207 sewing machine
2) 12" panasonic t.v.
3) 1957 Emerson portable Hi-Fi, needs generator. stop manufacture of it top was red vinyl white brown patterns gold center

GABOR ID responded
10:30 AM

Public Defender Service

MEMORANDUM

TO: Attorney for Mack Chismo

FROM: Student Investigator

SUBJECT: Interview with Jack Hammer 9/15/73

Pursuant to your request, I conducted an interview with Jack Hammer on 9/15/73 at his home at 1357 South Frederick Street, Arlington, Virginia, and I obtained the following information:

1. Mr. Hammer is 55 years old, and lives with his wife and two daughters in their mid-twenties. He has a grown son who lives away from home. A third daughter is married to the defendant.

2. He has known the defendant for about two years, since shortly before his daughter Jane Marie married him. During that period he has been responsible for keeping the defendant employed. He is himself a licensed electrician, and works regularly on a sub-contract basis in construction of large buildings. He says that although the defendant claims to be an expert in electronics, he really is not qualified to do anything but carpentry and some simply wiring. When he (meaning Mr. Hammer) takes a job he either employs the defendant himself or gets him a job with the prime contractor.

3. He says that he has never known the defendant to have any unusual sex hangups, as far as he knows. He says we better talk to his wife about that.

4. He knows the tavern that the defendant refers to, but he does not know anyone who comes there by the name of Bob who fits the description.

5. He is fairly certain that at the time of the assault, if it is

to have occurred about 3:15 a.m. on 8/24, defendant could not have done it, because he and the defendant were working on a job for the Agnew Construction Company at Columbia Pike and Highland in Arlington at that time. From 8/20 to 8/30, they were working a 4 to 12 shift, and they almost always put in overtime, at least two hours.

6. By the time they washed up, it would be about 2:10 a.m., and it would take about 20 minutes to drive home. Mack would stop by for a beer, and then would walk to his own home about three blocks away.

7. He is fairly certain that his procedure was followed on Thursday, 8/23 and Friday morning 8/24 because he remembers it was on a Thursday night when they were wiring for the air conditioner and the furnace, and they worked at least until two because they had to get the job finished for the inspectors who were coming on the weekend.

8. He likes Mack and will do anything he can to help.

Week Four: Day 19

THE TRIAL: PREPARING WITNESSES TO TESTIFY – DIRECT EXAMINATION

A new character enters the case at this point, "Jack Hammer," the defendant's alibi witness, who will testify that he was with the defendant on the night in question until the time the rape occurred.

The person playing the role of Jack Hammer is to be provided with the basic outline of his story, but it is up to individual attorneys to prepare him for the manner in which his story will be drawn out in court. The purpose of the exercise is to give trainees practice in preparing witnesses to testify on direct examination and to meet cross-examination by the prosecutor.

The afternoon of this day's session is spent in direct and cross-examination of Jack Hammer. The technique of direct examination is emphasized and the witness may be instructed to "forget" something to force the trainee conducting the examination to refresh recollection properly. The cross-examination should be conducted by one of the trainees so he (and others by observation) can begin to understand how the prosecutor operates.

Public Defender Service

MEMORANDUM

TO:

FROM: [Training Director]

SUBJECT: Chismo's Accomplice

ASSIGNMENT

You have discovered the docket in the case of State v. Robert M. Seidel, Criminal No. 1080-73, Superior Court. The docket contains the attached indictment and affidavit in support of an arrest warrant plus the notation: "Sept. 14, 1973: Arraigned; defendant pleads not guilty, counsel present. Case set for trial Dec. 7, 1973."

Office of the Sex Section
Metropolitan Police Department
Washington, D.C.
Sept. 12, 1973
Time: 2:45 p.m.

Ref. Rape and Burglary committed against Janice Martin W/F 25 years of 1607 31st N.W. at 3:30 a.m. 8/24/73

Statement of Robert M. Seidel, W/M 23, born Talladega, Alabama, 4/13/50, taken by R. Sedgewick, in the presence of Martin Offutt, Esq., attorney for Robert M. Seidel.

STATEMENT:

I, Robert M. Seidel, charged in Crim. No. 1080-73, Superior Court for the District of Columbia, with receiving stolen property in excess of $100 value, make the following statement voluntarily and of my own free will. I have been advised by my attorney, Martin Offutt, who is present with me, that I have a right not to make a statement and that any statement I do make could be used against me. I am making this statement on the advice of Mr. Offutt, and no threats or promises of any kind have been made to induce me to make this tatement.

On Thursday, Aug. 23, 1973, I met Mack Chismo, whose photograph I have identified, at the Bottle and Bucket Tavern in Shirlington, Va., at about 11:30 p.m. At that time I only knew Chismo by the name of Mack through drinking beer with him several times before at the Bottle and Bucket.

At that time Chismo stated he was going to break an apartment he had cased on 31st St. in Washington, D.C. He said he was sure the owner was on vacation because he saw newspapers piled up on the front door and no lights on at night. We kept drinking beer at the tavern until 2 a.m. when it closed and talked about how he would get in and I would be the lookout in front.

At 2:00 a.m., 8/24/73 Chismo and me went to Chismo's house in Arlington where he picked up some burglary paraphernalia consisting of scissors, hatchet and rope. We then went in my car, a green 1969 Buick Wildcat sedan, to the 1600 block of 31st St., N.W. where I parked and Chismo got out and went back a small alley in the 1600 block of 31st St. N.W. I waited about a half hour in the car, then left because I figured Chismo might have been arrested.

Later that day I proceeded to Chismo's house to find out what happened. There I saw a record player, a TV set, a sewing machine. We decided I would get the record player and TV as my share for being lookout. I kept the record player and pawned the TV at

a place in Washington.

I have read this statement and it is the truth to the best of my knowledge and belief. I sign it in the presence of my attorney.

Robert Seidel

Witnessed:

Martin Effron, Esq.

SUPERIOR COURT

Holding a Criminal Term
Grand Jury Sworn in on September 5, 1973

STATE	:	
v.	:	Violation: Receiving stolen goods
	:	22 D.C. Code 2205
ROBERT M. SEIDEL	:	

The grand Jury charges:

On or about August 24, 1973, within the District of Columbia, Robert M. SEIDEL, with intent to defraud, received and bought one television set and one hifi record player, of the value of $100 or upward, which property had been stolen and obtained by robbery, the said Robert M. Seidel at the time well knowing or having cause to believe the same to have been stolen or obtained by robbery.

_____
District Attorney of the State

A TRUE BILL:

_____
Foreman.

SUPERIOR COURT AFFIDAVIT
IN SUPPORT OF AN ARREST WARRANT

DEFENDANT'S NAME: SEIDEL, Robert May

SEX: Male

DESCRIPTION: Race: W Age: 23 Height: 5'11" Weight: 175
Eyes: Brn Hair:Brn Complexion:White

Defendant's Home Address: 1509 N. Rhodes St., Arlington, Va.

Defendant's Work Address: Unknown

Complainant's name: Janice MARTIN

Where did the offense happen: 1607 31st St., N.W., Washington, D.C.

When did the offense happen: 0630 hours, Aug. 24, 1973

Tell briefly what happened: Paul M. Brocker, 4080 Hamilton St., Hyattsville, Md., reports that at about 1500 hours, Aug. 27, 1973, an unknown white male came to Paul's pawnshop, 1534 You St., N.W. which Mr. Brocker manages, and pawned a 12" Panasonic B&W portable TV under the name of Robert Washburn. This TV was dusted for latent fingerprints by Det. Simmons, identification division, and was shown to the above complainant on Aug. 30, 1973.

The above complainant reports that she can positively identify the TV as having been taken from her above premises at the above date and time by a negro male who raped and robbed her.

Latent prints lifted from the TV set are positively identified by Det. Simmons as those of the above defendant, who was convicted in 1971 for unlawful entry and taking property without right.

In view of the foregoing, it is respectfully requested that a Superior Court Arrest Warrant be issued for the above defendant's arrest.

TO: WARRANT CLERK
Please issue a Warrant for:

_____

Charge with: _____

_____
ASSISTANT DISTRICT ATTORNEY

AFFIANT'S NAME: _____
Subscribed and Sworn to before me this 9th day of September, 1973.

_____
JUDGE, Superior Court

OVERVIEW OF WEEK V

OVERVIEW OF WEEK V

	TOPICS	TRAINING TECHNIQUES	EXERCISE MATERIALS	BACKUP MATERIALS
Day 20	The Trial: Cross Examination	Review issues of scope, bias, motive, prior convictions, prior statements; Role Play Cross Examination	None	None
Day 21	The Trial: Miscellaneous Trial Situations	Discussion/ Lecture on Misconduct, *in absentia*, *pro se* defense, continuance	None	None
Day 22	The Trial: Opposing the Examination of Witnesses	Role Play	None	None
Day 23	The Trial: Cross Examination	Role Play/ End of *Chismo* case	None	Role Profile: Janice Martin and Janice Martin Statement
Day 24	Family Division I	Tour juvenile detention facilities	None	None

Week Five: Day 20
THE TRIAL: CROSS EXAMINATION

The morning of the day's session on cross-examination is spent reviewing the substantive issues of scope, bias, motive, prior convictions, and prior inconsistent statements.

The afternoon puts these points into practice with the cross-examination of the defendant's accomplice. The materials available are an indictment of the accomplice, Robert Seidel, and his statement to Det. Sedgewick of the Sex Section. (These materials were distributed to the trainees at the end of the previous day.) If possible, this session should be videotaped so attorneys have the opportunity to view their performance.

Week Five: Day 21

THE TRIAL: MISCELLANEOUS TRIAL SITUATIONS

Some trial situations which the *Chismo* case does not create are misconduct, trial *in absentia*, *pro se* defense, and continuance. These are covered in a morning class and have to be prepared ahead of time.

At PDS the afternoon of this day is spent touring the Women's Detention Center. This tour does not relate in sequence to the rest of the training and can be fit in wherever convenient.

Week Five: Day 22
THE TRIAL: OPPOSING THE EXAMINATION OF WITNESSES

This day is spent opposing the examination of Janice Martin and the defendant, Mack Chismo.

The emphasis is on making the proper objections to the assistant district attorney's examination of these two people. The assistant district attorney has been coached beforehand to display arguably improper conduct in his examination of Janice Martin. He shows physical evidence to the jury before it has been properly identified; he asks leading or improper questions, such as "were you raped," which is for the jury to decide.

Mack Chismo takes the stand to establish his alibi. Here again the assistant district attorney has been instructed to conduct an improper cross-examination to which the trainees should object.

Beyond the general outlines suggested above, we have no specific recommendations as to the improper actions which your assistant district attorney should take in this role-play. Your own experience with prosecutorial tactics in your jurisdiction is the best guide for instructing him on his role.

In preparation for this session, the training director should gather and have available the evidence used during trial, i.e., ropes, pillow case, credit cards.

Week Five: Day 23
THE TRIAL: CROSS-EXAMINATION

The entire day is spent cross-examining Janice Martin. PDS uses two actresses; one would tire before the day was out. Materials for preparing Janice Martin follow.

Your briefing of them will have to be thorough, if their portrayals are to be convincing, and you may want to give them some practice in being cross-examined before the actual day's session. You might also suggest to them that they play the victim differently before different attorneys, since, otherwise, the attorneys who were able to watch their fellow trainees earlier in the day would develop a "pat" approach to the process, which would incorporate the best tactics seen thusfar and which would not test their own originality. A Janice Martin could be angry, embarassed, unsure of herself, very proper, slightly disreputable, racist, etc. Much will depend upon the abilities of the women who portray her, but the wider a set of characterizations, the greater will be the challenge to the trainees.

This session ends the *Chismo* case.

OVERVIEW OF WEEK VI

OVERVIEW OF WEEK VI

	TOPICS	TRAINING TECHNIQUES	EXERCISE MATERIALS	BACKUP MATERIALS
Day 25	Family Division II	Lecture on handling juvenile cases	None	None
Day 26	Family Division III	Courtroom observation	None	None
Day 27	Family Division IV	Lecture of programs available as alternatives to prosecution or incarceration	None	None
Day 28	(open)			
Day 29	(open)			

Week Five: Day 24 Through Week Six: Day 27
FAMILY DIVISION

PDS spends four days on Family Division cases; this may be more than your service's caseload makeup would warrant. You probably would want to include at least a tour of juvenile detention facilities and courtroom observation, plus a class on how juveniles are handled in your state, which status offenses are enforced, what programs are available as alternatives to either regular prosecution or incarceration. You will need to prepare a list of references similar to the one PDS uses but with references to state law.

This concludes the day-by-day review of PDS's training program for new staff attorneys. By way of summary, here is what is required, if you wish to adapt it to your training needs:

What	Who	When
Presentations on Discovery, Search & Seizure, Confessions, Identification, Sufficiency, Competency and Insanity, Jencks Act, Cross-examination, Misc. Trial Situations, Juvenile Court Law	Senior staff attorneys assisted by the training director who recruits law students to do background research	Substantially before training begins
Appropriate references to statute and case law for the above topics	The Training Director, assisted by the law students	Ongoing, throughout the year, incorporating new developments in both statutes and cases
Specific criteria for evaluating trainees' performances	The Training Director, in consultation with senior staff attorneys	Substantially before training begins
Actors to play parts in training cases	The Training Director, assisted by all the staff, who tell their spouses, kinfolk and friends	Start recruiting at least two months before training begins; seek experienced actors for key parts such as "Janice Martin"
Money to pay the actors	The defender service	After each "performance" (probably)
Guides to procedures in the several courts	The Training Director, helped by PDS guides as models	Substantially before training begins

Some additional general hints for developing your training program: Ask current staff members what their biggest weaknesses were when they began work -- what procedures or issues caught them the most unprepared. Ask them also to contribute case references for the various topics that have to be covered in lecture/discussion presentations. Also, you should obtain copies of all General Orders issued to the police in your jurisdiction, so that your attorney will know what practices the police have been instructed to follow in such procedures as search and seizure, advisement of rights, etc.

3.5 Trainee Assignment Materials

The materials in this section contain both reading and classroom assignments for the trainees. The Training Director should review these materials in conjunction with the weekly-daily course descriptions in Section 3.4.

Prior to the distribution of this package of materials at the beginning of the course, the Training Director will need to add applicable state and local references; specify date, instructor, time of each class, and a schedule for the entire course.

Public Defender Service Training Program

WEEK	Day 1	Day 2	Day 3	Day 4	Day 5
I	2:00 Orientation	9:30 Court Observation 4:00 Discussion	Initial Appearance and Bail 10:00 Class 2:00 Conduct a Bail Hearing	Assembling the Facts I 10:00 Interviewing the Defendant 2:00 Preliminary Hearings - Probable Cause	Pick up Cases with Staff Attorneys
II	Day 6 Assembling the Facts II Investigation 10:00 Interview Complaining Witness	Day 7 Assembling the Facts II Investigation - continued 10:00 Instruct Investigator 2:00 Review Investigator's Report - Discuss Ethical Issues	Day 8 Assembling the Facts III Discovery and *Brady* 10:00 Status Hearing 3:00 Class	Day 9 Tours 9:30 District of Columbia Jail 2:00 Metropolitan Police Department	(open)
III	Day 10 Attacking the State's Evidence I Search and Seizure 2:00 Class	Day 11 Attacking the State's Evidence I Search & Seizure-continued 10:00 Motion to Suppress 2:00 Motion to Suppress-continued	Day 12 Attacking the State's Evidence I - Search & Seizure-con't. 10:00 Summary & Critique II - Confessions 2:00 Class	Day 13 Attacking the State's Evidence II Confessions - continued 10:00 Motion to Suppress 2:00 Motion to Suppress-continued	Day 14 Attacking the State's Evidence II-Confessions - continued 10:00 Summary & Critique III - Identification 2:00 Class 7:30 Ride in Police Cars
IV	Day 15 Attacking the State's Evidence III Identification - con't. 10:00 Motion to Suppress 2:00 Motion to Suppress-continued	Day 16 Attacking the State's Evidence III- Identification-con't. 10:00 Summary & Critique Sufficiency of the State's Case 2:00 Class	Day 17 Competency and Insanity 10:00 Class 2:00 Tour	Day 18 The Trial I *Jencks* Act 10:00 Class 2:00 Hearing	Day 19 The Trial II: Preparing Witnesses to Testify - Direct Examination 10:00 Prepare Alibi Witness 2:00 Direct & Cross-examination of Alibi Witnesses
V	Day 20 The Trial III Cross-Examination 10:00 Class 2:00 Cross-Examine Accomplice	Day 21 The Trial IV Misc. Trial situations 10:00 Class 2:00 Tour Women's Detention Center	Day 22 The Trial V: Opposing the Examination of Witnesses 10:00 "Janice Martin" 2:00 The Defendant	Day 23 The Trial VI Cross-Examination 10:00 Cross-Examine Janice Martin 2:00 Cross-Examine Janice Martin	The Family Division I 10:00 Tour Juvenile Detention Facilities
VI	The Family Division II Juvenile Court Law 10:00 Class	The Family Division III Court Observation	The Family Division IV 10:00 Practice Hints 2:00 Social Resources	(open)	(open)

106

DATE:

TOPIC: Initial Appearance and Bail

INSTRUCTOR:

TIME:

ASSIGNMENT

You met your client today, September 7, 1973, in the cellblock of the Superior Court of the District of Columbia. He is a Negro male, approximately six feet in height, slender build, with a small to medium bush, and a medium complexion. He is friendly and well spoken, and in spite of the din in the cellblock, in the few minutes you have before presentment before the Honorable William Dow, you learn the following information about his background.

He was born in Austin, Texas, on August 7, 1929. He has lived in the District of Columbia area for approximately two years, and presently resides at 1038 S. Frederick Street with his wife and her two children by a former marriage. He has no phone at his home, but a neighbor has a phone which can be used to contact his wife. He has no other relatives in the District of Columbia area, although he has a son in Galax, Virginia and a daughter somewhere in Oklahoma.

He tells you that he has been convicted of a violation of the Dyer Act in Milwaukee in 1966, and a breaking and entering in Fairfax, Virginia in November of 1972. He also tells you that he has twice escaped from custody, in Virginia, many years ago. He is presently attending school at the Control Data Institute in Arlington, Virginia from 7:30 A.M. to 1:30 P.M. His instructors are Mr. Collins and Mr. Smith. He is between jobs at the moment, although he considers himself a self-employed carpenter and electrician. His most recent job was with the Agnew Construction Co. in Arlington, Virginia.

He denies any involvement in the offense with which he is charged and is able to give you no information about it. He tells you that he was

arrested somewhere in Georgetown, as he searched for a person who had driven to Georgetown with him from Virginia. That person had promised to sell him some tools for his work, and that he had double parked as the individual went into a building. When the individual did not return he parked his car and walked through the building into the backyard looking for the individual. He was approached by police officers and informed that he was under arrest for trespassing. He later learned that he had been charged with rape.

Prepare to argue for his release.

MATERIALS

1. Bail Reform Act, 18 U.S.C. §§ 3146-3152, D.C. Code §§ 23-1321 to 23-1332.
2. Superior Court Criminal Rules 5, 46, 46-I.
3. D.C.C.A. Rule 9 and Form 4
4. CPI Manual, pp. 69-83.
5. Grimes v. United States, 129 U.S. App. D.C. 308, 394 F.2d 933 (1967).
6. Schackelford v. United States, 127 U.S. App. D.C. 285, 383 F.2d 212 (1967).
7. Wood v. United States, 129 U.S. App. D.C. 143, 391 F.2d 981 (1968).
8. Salley v. United States, 134 U.S. App. D.C. 90, 413 F.2d 364 (1968).
9. United States v. Leathers, 134 U.S. App. D.C. 38, 412 F.2d 169 (1969).
10. United States v. Alston, 136 U.S. App. D.C. 334, 420 F.2d 176 (1969).
11. United States v. Thompson, 147 U.S. App. D.C. 1, 452 F.2d 1333 (D.C. Cir. 1971), cert. denied, _____ U.S. _____ (1972).
12. Bouknight v. United States, 305 A.2d 524 (D.C.C.A., May 16, 1973).

13. United States v. Reese, ____ U.S. App. D.C. ____, 463 F.2d 830 (1972).

14. United States v. Jones, et al., ___ U.S. App. D.C. ___, ____, F.2d ___ (D.C. Cir. Jan. 18, 1973).

15. Major Coward v. United States, Crim. No. 59137-72 (D.C.C.A. Nov. 22, 1972).

16. Miles Hampton v. United States, Crim No. 55250-72 (D.C.C.A. Dec. 7, 1972).

17. Tyrone Marshall v. United States, ____ A.2d____, (D.C.C.A. No. 7589, decided August 8, 1973).

DATE:

TOPIC: Assembling the Facts - I

A. Interviewing the Defendant

INSTRUCTOR:

TIME:

ASSIGNMENT

Prepare to interview the defendant, Mack Chismo, who will be available at 11:00 A.M.

Interviewer to be selected at random.

110

DATE:

TOPIC: Assembling the Facts - I

B. The Preliminary Hearing

INSTRUCTOR:

TIME:

ASSIGNMENT

Conduct preliminary hearing in State v. Chismo.

Prosecutor - _____

Defense - _____

Witness - Detective _____
Sex Squad, Metropolitan Police Department

NOTE: Factual material obtained in preliminary hearing will become part of your file in preparation for trial. Since we do not have a reporter, all should take notes.

MATERIALS

I. Interviewing Defendant

ABA Standards Relating to the Prosecution & Defense Function

Standards - 3.1; 3.2; 3.5(b); 4.1; 4.2; 4.3; 5.1; 5.2; 5.3; 6.1; 6.2; and commentary to all.

II. Pre-Hearing

1. Rule 5, FRCrP & SCR
2. Coleman v. Alabama, 399 U.S. 1 (1970)
3. Washington v. Clemmer, 119 U.S. App. D.C. 226 (1964)
4. Blue v. United States, 119 U.S. App. D.C. 315 (1964)
5. Crump v. Anderson, 122 U.S. App. D.C. 1973 (1965)
6. Coleman v. Burnett, 477 F.2d 1187 (1973)
7. United States v. King, _____ U.S. App. D.C. _____, #71-1267, dec. 7/18/73.

DATE:

TOPIC: Assembling the Facts II
Investigation

INSTRUCTOR:

TIME:

ASSIGNMENT

Review the Report of Crime against Person or Property and Affidavit for Arrest Warrant in the Sosnick Liquor Case. Mr. Sosnick will be available for interview, but is leaving immediately thereafter for a trip around the world, and will be unavailable until the trial. Be prepared to interview him.

MATERIALS

Shadoan, Law and Tactics in Federal Criminal Cases, pp. 1-29.

DATE:

TOPIC: Assembling the Facts II
Investigation - continued

INSTRUCTOR:

TIME:

ASSIGNMENT

Submit a written memorandum to your investigator in the Chismo Case. This should be in the hands of your instructor at 9:00 A.M. Be prepared to instruct your investigator orally on the basis of your memo. At 12:00 you will receive your investigator's report. Be prepared to critique it at 2:00 P.M. In addition, be prepared to discuss the following ethical problems:

1. One week before trial, the prosecutor advises you that he is unable to locate a key prosecution witness, and expects to ask for a continuance. You know where the witness is living, either (a) because your investigator traced him through a Post Office forwarding address; or (b) because your client gave you information which led you to the witness. Can you object to the continuance and/or move to dismiss? What should you say if the judge or the prosecutor asks you if you know where the witness is?

2. During your investigation of a case, you discover a witness not known to the police or the prosecutor whose testimony will be extremely harmful to your client. The witness asks you "Do I have to tell the police what I know?" What should your answer be?

Or, assume the witness says "I don't want to get involved and waste all that time going to Court. If I call the police, will I have to testify?" You believe that if the witness' existence was known to the prosecutor, the witness would be subpoenaed to testify at trial. What should your answer be?

3. You believe a prospective prosecution witness has a valid Fifth Amendment privilege against testifying. However, if he elects to testify, his testimony will be very damaging to your client. May you advise him of his Fifth Amendment rights, if your purpose in doing so is to prevent him from testifying against your client? Must you advise him? Does it matter whether your comments are limited to an explanation of the law or include a recommendation that he should claim his Fifth Amendment privilege?

4. You represent a defendant charged with raping his seven-year-old daughter. A key prosecution witness is the defendant's wife, but the court has indicated it will allow her testimony only if she waives in open court her spousal privilege under law. She has now decided that she does not wish to hurt her husband, and calls you to ask whether or not she should testify. Should you (a) tell her not to testify; (b) tell her she must decide for herself; (c) refuse to discuss the matter and ask the court to appoint counsel to advise her; (d) refuse to discuss the matter and do nothing; (e) urge your client to convince her not to testify? Does your answer change if the facts indicate that a conviction cannot be obtained without her testimony and you believe it likely that the defendant will repeat the offense?

5. Your client is charged with robbery, but your investigation leads you to believe that in fact the crime was committed by X. Can you interrogate X without advising him of his Fifth Amendment right? Are you required by your obligation to your client to interrogate X without advising him? Can you call X as a witness without advising the court of your expectation that his testimony will be self-incriminating?

6. Your client advises you that Y has information which would be helpful to your defense of the case. Y is presently in custody awaiting trial on an unrelated charge, and is represented by counsel. Can you interview Y without notifying his counsel?

7. Your investigator advises you that the complainant, whose window was allegedly broken by your juvenile client, has stated that he does not wish to prosecute if someone would pay him the $25 it cost to replace the window. What should you do?

MATERIALS

Code of Professional Responsibility
Canon of Professional Ethics
Evans v. United States, 459 F.2d, 1135 (D.C.Cir. 1972)

DATE:

TOPIC: Assembling the Facts III

Discovery and Brady

INSTRUCTOR:

TIME:

ASSIGNMENT

Your defendant, Mack Chismo, has been arraigned before Judge _____ on a multi-count indictment charging rape and burglary. The Assistant District Attorney assigned to the case is _____ A status hearing has been scheduled for Thursday at 9:30 a.m. in a courtroom to be announced in the Superior Court. As a result of your earlier preparation, you should have in your possession the indictment, the preliminary hearing transcript, the offense report, and your notes from your interview of the defendant.

The assignment is to get your discovery done and to prepare yourself to conduct the status hearing.

Most of you should not find it necessary to file a formal, written discovery motion with the court. If you do find it necessary, under no circumstances should you file a full-blown, boiler-plate discovery motion. If you do, you will find that it receives exactly the same attention it would receive in a real court -- none.

You may find the materials assigned for the afternoon class helpful. Consider whatever treatises, tracts, handbooks or hornbooks you like. You may consult each other or any practicing attorney. However, I do ask that prior to the status hearing you not compare notes among yourselves as to what materials you have actually discovered. Much of the problem in discovery is to figure out what there is to discover.

It will, therefore, reduce the value of this problem if you find out from each other what the other has discovered. Instead, treat this problem the way the law in fact does treat it -- as a kind of very serious Easter-egg hunt or game of hide-and-seek. No ex parte communications with the Honorable _____.

SCHEDULE

In addition to the status hearing at 9:30 a.m., we will discuss individually your individual discovery as follows:

11:00 a.m. -
11:30 a.m. -
12:00 noon -
12:30 p.m. -
1:00 p.m. -
1:30 p.m. -
2:00 p.m. -
2:30 p.m. -

These meetings will be in the Conference Room. At 3:00 p.m. in the same room, we will all discuss the materials on the list below, some exotic discovery problems, some ideas for potential litigation, and generalized themes in the above discovery problems. All observations about the value of this exercise will be entertained at this time.

Editor's Note: Do not wait until the last minute, or even the day before, to begin this assignment. You will be given all the materials, except the preliminary hearing transcript. The preliminary hearing will be held on _____. Since Asst. D.A. _____ will be busy, better make firm appointments with him immediately thereafter. You should be familiar with the legal materials when you talk to him.

MATERIALS

Superior Court Rules of Criminal Procedure, Rules 16, 16-I, 16-II, 7(f), 6(e).

Federal Rules of Criminal Behavior, Rules 16, 7(f).

U.S. District Court Rules, D.C., Rule 2-5.

1973 Criminal Practice Manual, pp. 149-163.

Cases for Discussion

1) Discovery

Gregory v. U.S., 125 U.S.App. D.C. 140, 319 F.2d 185 (1966).

U.S. v. Jefferson, 144 U.S. App. D.C. 177, 445 F.2d 247 (1971).

Fleming v. U.S., 135 U.S. App. D.C. 131, 417 F.2d 548 (1969).

2) Brady

Brady v. Maryland, 373 U.S. 83 (1963).

U.S. v. Gibson, 100 Wash.L.Rep. 1971 (D.C. Super. Ct. No. 37343-72, August 30, 1972).

Giles v. Maryland, 386 U.S. 66 (1967)

Giglio v. United States, 405 U.S. 150 (1972).

Moore v. Illinois, 408 U.S. 786, 33 L.Ed. 706 (1972).

Levin v. Clark, 133 U.S. App. D.C. 6, 408 F.2d 1209 (1967)

3) Grand Jury Testimony

Harris v. U.S., 140 U.S. App. D.C. 21, 433 F.2d 1127 (1970).

4) Discovery by Prosecutor

Williams v. Florida, 399 U.S. 79 (1971).

Wardius v. Oregon, 41 U.S.L.W. 4804, dec. 6/11/73.

U.S. v. Lewis, 100 Wash. L. Rep. 2485 (D.C. Super. Ct. No. 49138-72, November 17, 1972).

U.S. v. Hooker, 101 Wash. L. Rep. 549 (D.C. Super. Ct. No. 55237-72, November 17, 1972).

Witherspoon v. Walsh (U.S. App. D.C., May 19, 1972) (Unreported opinion).

Interesting but Not Immediately Relevant (Not required reading)

1) Court's Inherent Power to Order Discovery

U.S. v. Eley, 286 A.2d 239 (1972).

Jones v. Superior Court, 58 Cal. 2d 56, 62, 372 P.2d 919, 922, 22 Cal Rptr. 879, 882 (1962).

People v. Lopez, 60 Cal. 2d 223, 32 Cal. Rptr. 424, 384 F.2d 16 (1963).

Shores v. U.S., 174 F.2d 838, 845 (8th Cir. 1949).

Bernard v. State, 248 Ind. 688, 651, 230 N.E.2d 536, 539 (1967).

U.S. v. Liddy, Nos. 72-2210 & 72-2211 (U.S. App. D.C., Dec. 20, 1972) slip at p. 5.

U.S. v. Hardy, U.S. Dist. Ct. D.C. Crim. #869-68.

U.S. v. Wright, U.S. App. D.C. No. 72-1356, pending decision, briefs are available in office.

2) Other Notice-of-Alibi Materials

Proposed Federal Rules, 52 F.R.D. 409, 48 F.R.D. 547, 594.

People v. Holiday, 47 Ill. 2d 300, 265 N.E.2d 634 (1970).

State v. Angeleri, 51 N.J. 382, 241 A.2d 3 (1968).

3) Liberal State Discovery Rules

33 Florida Statutes Annot., Rule 3.220

4) Other Brady Cases

Hamric v. Bailey, 386 F.2d 390 (4th Cir. 1968).

Barbee v. Warden, 331 F.2d 842 (4th Cir. 1964).

U.S. v. Palmer, 151 U.S. App. D.C. 317, 467 F.2d 371 (1972).

U.S. v. Bishton, 150 U.S. App. D.C. 51, 57, 463 F.2d 887 (1972).

Xydas v. U.S., 144 U.S. App. D.C. 184, 445 F.2d 660 (1971).

Comment, 40 U.Chi.L.Rev. 112 (1972).

5) Discovery of Government Rebuttal Evidence

U.S. V. Schneiderman, 104 F. Supp.____, 410 (S.D.Cal.1952).

U.S. v. Jones, 425 F.2d 1048, 1054-55 (9th Cir. 1970).

6) Background

ABA Code of Professional Responsibility, DR 1-102; 5-102; ED 7-18; DR 7-104; DR 7-109.

ABA Minimum Standards: The Defense Function, §§4.1; 4.2; 4.3.

ABA Minimum Standards: The Prosecution Function, § 3.11.

ABA Minimum Standards Discovery and Procedure Before Trial, Generally.

Shadoan, Law and Tactics in Federal Criminal Cases, pp. 125-141.

Cipes, Criminal Defense Techniques,Chapter 10.

8 Moore's Federal Practice, §§7.06; 16.01-16.10.

Wright, Federal Practice and Procedure, pp. 488-535.

DATE:

TOPIC: Attacking the State's Evidence I

Search and Seizure

INSTRUCTOR:

TIME:

ASSIGNMENT

Review the following materials on search and seizure law and tactics.

MATERIALS

I. Warrants

Read Law & Tactics in Exclusionary Hearings 102-129, 185-207

A. Statutory

[State Code]

B. Probable Cause (Special warrant problems)

1. Jones v. United States, 362 U.S. 257 (1960).
2. Aquilar v. Texas, 378 U.S. 108 (1964).
3. Spinelli v. United States, 393 U.S. 410 (1969)

*4. United States v. Harris, 403 U.S. 573 (1971)

*5. United States v. Berry, 463 F.2d 1278 (1972).

C. Particularity

1. Keiningham, 109 U.S. App. 272, 287 F.2d 126 (1960).
2. Moore v. United States, 461 U.W. App. D.C. ___ F.2d 1236 (1972).

D. When Needed

1. Johnson v. United States, 333 U.S. 10 (1948).
2. Dorman, 140 U.S. App. 313, 435 F.2d 385 (1970).

*3. Hailes v. United States, 267 A.2d 363 (1970).

*4. Cady v. Dombrowski, ___ U. S. ___, 37 L.Ed.2d 706 (1973).

II. Arrests

Read Law and Tactics in Exclusionary Hearings 130-184.

A. Definition of Arrest

*1. Cupp v. Murphy, ___ U.S. ___, 36 L.Ed.2d 900 (1973).

2. Kelley v. United States, 111 U.S. App. 396, 298 F.2d 310 (1961)

3. Henry v. United States, 361 U.S. 98 (1959).

4. Green v. United States, 275 A.2d 555 (1971).

5. Campbell v. United States, 273 A.2d 252 (1971).

B. Search Incident to Arrest

1. Scope to underlying charge

*a. United States v. Robinson, 471 F.2d 1082 (1972).

b. United States v. Mills, 472 F.2d 1231 (1972).

*c. United States v. Simmons, 302 A.2d 728 (1973).

2. Scope Generally

*a. Chimel v. Ca., 395 U.S. 752 (1969).

*b. Cupp v. Murphy ___ U.S. ___, 36 L.Ed.2d 900 (1973).

c. Fuller v. United States, 139 U.S. App. 375, 433 F.2d 533 (1970).

d. Atkinson v. United States, 295 A.2d 541 (1971).

e. United States v. Jones, 275 A.2d 541 (1971).

f. Gilchrist v. United States, 300 A.2d 453 (1973).

C. "Fruits" Doctrine

*1. Wong Sun v. United States, 371 U.S. 471 (1963).

2. Bynum v. United States, 104 U.S. App. 368, 262 F.2d 465 (1958).

3. Gatlin v. United States, 117 U.S. App. D.C. 123, 326 F.2d 666 (1963).

4. Johnson v. La., 406 U.S. 356 (1972).

*5. Hamilton v. United States, 392 U.S. 219 (1968).

III. On the Street Arrests and Searches

A. Probable Cause

1. Smith v. United States, 247 A.2d 293 (1968).
*2. von Sleichter v. United States, 267 A.2d 336 (1970).
3. Murphy v. United States, 293 A.2d 849 (1972).
4. Munn v. United States, 283 A.2d 28 (1971).
*5. Daugherty v. United States, 272 A.2d 675 (1971).
6. Perry v. United States, 215 A.2d 845 (1966).
7. United States v. Bynum, 283 A.2d 649 (1971).
8. Jones v. United States, 286 A.2d 861 (1972).

B. Terry: Stop & Frisk

*1. Terry v. Ohio, 392 U.S. 1 (1968).
*2. Adams v. Williams, 407 U.S. 143 (1968).
3. Robinson v. United States, 278 A.2d 458 (1971).
4. Stephenson v. United States, 296 A.2d 606 ( ).
*5. Peterkin v. United States
6. United States v. Burrell, 288 A.2d 248 (1972).
*7. Gray v. United States, 292 A.2d 153 (1972).
8. Smith v. United States, 295 A.2d 64 (1972).
9. United States v. Dowling, 271 A.2d 406 (1970).
*10. United States v. Walker, 294 A.2d 376 (1972).

IV. Auto Searches

A. Generally

1. Carroll v. United States, 267 U.S. 132 (1925).
2. Brinegar v. United States, 388 U.S. 160 (1949).
3. United States v. Harris
*4. Chambers v. Maroney, 399 U.S. 420 (1970).
5. Cady v. Dombrowski, ___ U.S. ___, 37 L.Ed. 706 (1973).

B. Search on Probable Cause

*1. Chambers v. Maroney, 399 U.S. 42 (1970).

*2. United States v. Free, 437 F.2d 631, 141 U.S. App. D.C. 198 (1970).

3. Watts v. United States, ____ U.S. ____ (1972).

C. Terry/furtive gesture

1. Adams v. Williams 407 U.S. 143 (1972).

*2. United States v. (Harry) Green, 465 F.2d 620, 151 U.S. App. D.C. 35 (1972).

3. United States v. Page, 298 A.2d 233 (1972).

V. No Search

A. Abandonment vs. Concealment

*1. United States v. Hayes, 271 A.2d 701 (1971).

2. Smith v. United States, 292 A.2d 150 (1972).

*3. Work v. United States, 100 U.S. App. 237, 243 F.2d 660 (1957).

B. Plain View

*1. Coolidge v. New Hampshire, 403 U.S. 443 (1971).

2. Palmore v. United States, 290 A.2d 573 affirmed on other grounds 36 L.Ed.2d 342 (1973).

3. Jones v. United States, 299 A.2d 538 (1973).

4. Payne v. United States, 292 A.2d 800 (1972).

5. United States v. Wright, 449 F.2d 1355 (1971).

VI. Consent

*A. Schneckloth v. Bustamonte, ___ U.S. ___, 36 L.Ed.2d 854 (1973).

*B. Stoner v. California, 376 U.S. 483 (1964).

*C. Bumper v. North Carolina, 391 U.S. 543 (1968).

D. DuPont v. United States, 259 A.2d 355 (1969).

VII. Procedural Problems

A. Standing

*1. (Cecil) Jones v. United States, 362 U.S. 257 (1960).

*2. Barnes v. United States, ____U.S.___, 37 L.Ed.2d 380 (1973).

3. Simmons v. United States, 390 U.S. 377 (1968).

B. Motions

*1. Pinckney v. United States, ___ A.2d ____

*2. Shellie v. United States, 277 A.2d 288 (1971).

3. Brown v. United States, 289 A.2d 891 (1972).

4. United States v. Jones, 275 A.2d 541 (1971).

5. United States v. Greely, 138 U.S. App. 161, 425 F.2d 592 (1970).

VIII. Miscellaneous

A. Interior of Body

1. Rochin v. California, 342 U.S. 165 (1952).

*2. Schmerber v. California, 394 U.S. 721 (1969).

B. Undisguisable Bodily Features

*1. Davis v. Mississippi, 294 U.S. 721 (1969).

2. Gilbert v. California (handwriting), 388 U.S. 263 (1967).

*3. Dionisio v. United States, 410 U.S. 1 (1973).

* = of major interest and importance to the class

125

DATE:

TOPIC: Attacking the State's Evidence I

Search and Seizure - Continued

INSTRUCTOR:

TIME:

ASSIGNMENT

Prepare Motion to Suppress Evidence in State v. Chismo. Submit to Instructor by 9:00 A.M.

Conduct Motion to Suppress in State v. Chismo. Specific assignments to be announced.

DATE:

TOPIC: Attacking the State's Evidence I
Search and Seizure - Continued

INSTRUCTOR:

TIME:

ASSIGNMENT

Be prepared for a critique and summary of motions.

127

DATE:

TOPIC: Attacking the State's Evidence II

Confessions

INSTRUCTOR:

TIME:

ASSIGNMENT

Review the following materials on confession law and tactics.

MATERIALS

I. Basic Materials

Miranda v. Arizona, 384 U.S. 436, 16 L.Ed.2d 694 (1966).

Harris v. New York, 401 U.S. 222, 28 L.Ed.2d 1 (1971).

18 U.S.C. § 3501 (1968).

[State Code]

[Superior Court Rules]

Law and Tactics in Exclusionary Hearings, pp. 220-256.

II. Custodial Interrogation

Allen v. United States, 129 U.S. App. D.C. 61, 390 F.2d 476 (1968), and 131 U.S. App. D.C. 358, 404 F.2d 1335 (1968).

Montgomery v. United States, 268 A.2d 271 (D.C.C.A. 1970).

Tyler v. United States, 298 A.2d 224 (D.C.C.A. 1972).

III. Voluntariness -- Standards and Proof

Pea v. United States, 130 U.S. App. D.C. 76, 397 F.2d. 637 (1968).

United States v. (Thomas) Robinson, 142 U.S. App. D.C. 43, 439 F.2d 553 (1970).

Procunier v. Atchley, 400 U.S. 446, 27 L.Ed.2d 524 (1971).

Ruffin v. United States, 293 A.2d 477 (D.C.C.A. 1972).

IV. Waiver

Walker v. United States, 250 A.2d 553 (D.C.C.A. 1969).

Dupont v. United States, 269 A.2d 355 (D.C.C.A. 1969).

Pettyjohn v. United States, 136 U.S. App. D.C. 69, 419 F.2d 651 (1969), cert. denied, 397 U.S. 1058 (1970).

United States v. McNeil, 140 U.S. App. D.C. 3, 433 F.2d 1109 (1969).

Mitchell v. United States, 140 U.S. App. D.C. 209, 434 F.2d 483 (1970).

United States v. (Lawrence) Robinson, 148 U.S. App. D.C. 140, 459 F.2d 1164 (1972).

Schneckloth v. Bustamonte ____ U. S.____, 36 L.Ed.2d 854 (1973) [assigned in search and seizure class]

United States v. Frazier, ____ U.S. App .D.C. ___. 476 F.2d 891 (en banc) (1973).

Evans v. United States, 229 A.2d 136 (D.C.C.A. 1973).

Hawkins v. United States, 304 A.2d 279 (D.C.C.A. 1973).

V. Volunteered Statements

United States v. McNeil, supra.

Boslev v. United States, 138 U.S. App. D.C. 263, 426 F.2d 1257 (1970).

Brewster v. United States, 271 A.2d 409 (D.C.C.A. 1970).

United States v. Barnes, 150 U.S. App. D.C. 319, 464 F.2d 828 (1972).

DATE:

TOPIC: Attacking the State's Evidence II
Confessions - Continued

INSTRUCTOR:

TIME:

ASSIGNMENT

Prepare motion to suppress statements in State v. Chismo. Submit to instructor by 9:00 A.M.

Conduct motion to suppress statements in State v. Chismo. Specific assignments to be announced.

130

DATE:

TOPIC: Attacking the State's Evidence II

Confessions - Continued

INSTRUCTOR:

TIME:

ASSIGNMENT

Be prepared for a critique and summary of motions.

131

DATE:

TOPIC: Attacking the State's Evidence III

Identification

INSTRUCTOR:

TIME:

Class on Identification Law and Tactics

MATERIALS

I. The Right to Counsel

A. Lineups

Wade v. United States, 388 U.S. 218 (1967).

Gilbert v. California, 388 U.S. 263 (1967).

Kirby v. Illinois, 406 U.S. 682 (1972).

B. Photographs

United States v. Charles Ash, ___ U.S. ___, 37 L.Ed.2d 619 (1973).

United States v. Brown, 461 F.2d 134 (1971).

C. Showups

Stovall v. Denno, 388 U.S. 293 (1967).

United States v. Russell, 133 U.S. App. D.C. 77, 408 F.2d 1280 (1969).

United States v. Mason, 134 U.S. App. D.C. 280, 414 F.2d 1176 (1969).

United States v. Long, 137 U.S. App. D.C. 311, 424 F.2d 799 (1969).

United States v. Horton, 142 U.S. App. D.C. 225, 440 F.2d 253 (1971).

Materials for Class on Identification - Continued

II. Due Process

A. Lineups

Foster v. California, 394 U.S. 440 (1969).

Patton v. United States, 131 U.S. App. D.C. 197, 403 F.2d 923 (1968).

B. Photographs

Simmons v. United States, 390 U.S. 377 (1968).

United States v. Mason, supra.

Rufus Adams v. United States, 302 A.2d 232 (1973).

United States v. Sanders, ___ U.S. App. D.C. ___ , 479 F.2d 1193 (1973).

United States v. Michael E. Conyers (D.C.C.A.) No. 6973, decided 9/11/73.

Coleman v. United States, 298 A.2d 40 (1972).

C. Showups

Stovall V. Denno, supra.

Clemmons v. United States, 133 U.S. App. D.C. 27, 408 F.2d 1230 (1968).

United States v. O'Connor, 282 F. Supp. 963 (D.D.C. 1968).

Biggers v. Tennessee, 390 U.S. 404 (1968).

Neil v. Biggers, 409 U.S. 188 (1972).

Hemphill v. United States, 131 U.S. App. D.C. 46, 402 F.2d 187 (1968).

United States v. Wilson, 145 U.S. App. D.C. 343, 499 F.2d 1005 (1971).

Young v. United States, 140 U.S. App. D.C. 333, 435 F.2d 405 (1970.

III. Independent Source

United States v. Kemper, 140 U.S. App. D.C. 47, 433 F.2d 1153 (1970).

United States v. Gambrill, 146 U.S. App. D.C. 72, 449 F.2d 1148 (1971).

Cooper v. Picard, 316 F.Supp. 856 (D.Mass. 1970).

United States v. Garner ,142 U.S. App. D.C. 315, 439 F.2d 525 (1970) cert. denied, 402 U.S. 930 (1971).

United States v. Hurt, ___ U.S. App. D.C. ___, ___ F.2d ___ (#72-1015, dec. 3/21/73).

IV. Lineups Without Probable Cause

United States v. Adams, 130 U.S. App. D.C. 203, 399 F.2d 574 (1968).

United States v. Allen, 133 U.S. App. D.C. 84, 408 F.2d 1237 (1969).

United States v. Eley, 286 A.2d 239 (1972).

United States v. Eley (II), 287 A.2d 830 (1972).

Wise v. Murphy, 275 A.2d 206 (1971).

V. Defendant's Right to a Lineup and Duty of the Court to Order It

United States v. Gaines, 140 U.S. App. D.C. 402, 436 F.2d 150 (1970).

United States v. Caldwell, ___ U.S. App. D.C. ___, ___ F.2d ___ (#72-1926, dec. 6/22/73).

United States v. Smith, ___ U.S. App. D.C. ___, 473 F.2d 1148 (1972).

VI. Motion for New Trial Based on Weak Identification

United States v. Caldwell, ___ U.S. App. D.C. ___, 465 F.2d 669 (1972).

United States v. Harris, ___ U.S. App. D.C. ___, 475 F.2d 359.

DATE:

TOPIC: Attacking the State's Evidence III

Identification - Continued

INSTRUCTOR:

TIME:

ASSIGNMENT

Prepare Motion to Suppress Identification by Janice Martin in State v. Chismo. Submit Motion to Instructor by 9:00 A.M.

Conduct Motion to Suppress Identification in State v. Chismo. Assignments to be announced.

DATE:

TOPIC: Attacking the State's Evidence III
Identification - continued

INSTRUCTOR:

TIME:

Be prepared for a summary and critique of motions.

136

DATE:

TOPIC: Sufficiency of the Government's Case - MJOA

INSTRUCTOR:

TIME:

Class on MJOA Law and Tactics

MATERIALS

1. In General
   Fed. R. Crim. Pro., Super. Ct. Rule 29

   Cooper v. United States, 218 F.2d 39, 94 U.S. App. D.C. 343 (1954).

   Curley v. United States, 160 F.2d 229, 81 U.S. App. D.C. 389 (1947).

   Nye & Nissen v. United States, 336 U.S. 613 (1949).

   Cephus v. United States, 324 F.2d 893, 117 U.S. App. D.C. 15 (1963).

2. Aiding & Abetting

   [State Code]

3. U.S.C.A.

   Bailey v. United States, 416 F.2d 1110, 135 U.S. App. D.C. 95 (1969), 22 D.C. Code 105 (1967).

   United States v. McCall, 460 F.2d 952, 145 U.S. App. D.C. 162 (1970).

   United States v. Lumpkin, 448 F.2d 1085, 145 U.S. App. D.C. 162 (1971).

   Turborville v. United States, 303 F.2d 411, 112 U.S. App. D.C. 400 (1962).

4. [State] C.C.A.

5. Fingerprints

Borum v. United States, 127 U.S. App. D.C. 48, 380 F.2d 595 (1967).

Hiet v. United States, 124 U.S. App. D.C.313 365 F.2d 504 (1966).

Stevenson v. United States, 127 U.S. App. D.C. 43, 380 F.2d 590 (1967).

United States v. Cary , 470 F.2d 469 (1972).

Tounsley v. United States, 236 A.2d 63 (1967).

Patten v. United States, 248 A.2d 182 (1968)

6. Corroboration

Allison v. United States, 133 U.S. App. D.C., 409 F.2d 445 (1969).

Franklin v. United States, 117 U.S. App. D.C. 331, 330 F.2d 205 (1964).

United States v. Terry, 137 U.S. App. D.C. ____, 422 F.2d 704 (1970).

United States v. Jenkins, 140 U.S. App. D.C. __, 436 F.2d 140 (1970).

Wilson v. United States, 271 F.2d 492, 106 U.S. App. D.C. 227 (1959).

United States v. Hines, 148 U.S. App. D.C. 233, 460 F.2d 949 (1972).

United States v. George Gray, 477 F.2d 444 (1973).

United States v. Clarence Jones, 477 F.2d 1213 (1973).

Waterstaat v. United States, 252 A.2d 507 (1969).

Emburgh v. United States, 164 A.2d 342 (1960).

United States v. James, 452 F.2d 1375 (1971).

7. Constructive Possession

Outzs v. United States, 306 A.2d 664 (1973).

Porter v. United States, 282 A.2d 559 (1971).

Brown v. United States, 58 U.S. App. D.C. 311, 30 F.2d 474 (1929).

Wilson v. United States, 91 U.S. App. D.C. 135, 198 F.2d 299 (1952).

Hill v. D.C., 264 A.2d 145 (1970).

Malloy v. United States, 246 A.2d 781 (1968).

United States v. Bethea, 143 U.S. App. D.C. 68, 442 F.2d 790 (1971).

8. Complaining Witness

Riley v. United States, 291 A.2d 190 (1972).

DATE:

TOPIC: Competency and Insanity

INSTRUCTOR:

TIME:

Basic Statutory Materials

Cases

I. Competency to Stand Trial

Duskey v. United States, 362 U.S. 402 (1960); the basic definition of competency to stand trial.

Wilson v. United States, 129 U.S. App. D.C. 107, 391 F.2d 460 (1968); amnesia and competency to stand trial.

II. Competency to Plead Guilty

Grennett v. United States, 131 U.S. App. D.C. 392, 403 F.2d 928 (1968); effect of narcotics on competency to plead guilty. Q: Was the Duskey standard appropriately applied in this case?

McCoy v. United States, 124 U.S. App. D.C. 177, 363 F.2d 306 (1966); pleading guilty is different from standing trial.

In re Williams, 165 F.Supp. 879 (D.D.C. 1958) (ditto).

Seiling v. Eyman, ____ F.2d ____, 13 CrL 2174 (9th Cir. 1973); (standards for competency to plead guilty).

III. Consequences of Incompetency

Jackson v. Indiana, 406 U.S. 715 (1972).

IV. Criminal Responsibility

A. Raising the Defense

Lynch v. Overholser, 369 U.S. 705 (1962).

United States v. Collins, 139 U.S. App. D.C. 392, 433 F.2d 550 (1970).

United States v. Trantham, 145 U.S. App. D.C. 113, 448 F.2d 1036 (1971).

United States v. Gilbert Morgan, No. 72-1639 (D.C. Cir. August 7, 1973).

B. The Mental Observation

Thornton v. Corcoran, 132 U.S. App. D.C. 232, 407 F.2d 695 (1969); the staff conference.

Marcey v. Harris, 130 U.S. App. D.C. 301, 400 F.2d 772 (1968); release rights and mental observations.

C. The Substance of Criminal Responsibility

Durham v. United States, 94 U.S. App. D.C. 228, 214 F.2d 862 (Superior Court).

United States v. Brawner, ___ U.S. App. D.C. ___, 471 F.2d 969 (en banc, 1972).

D. Procedural Issues Surrounding Insanity Defense

United States v. Carr, 141 U.S. App. D.C. 299, 437 F.2d 662 (1970), should be compared with

Edmonds v. United States, 104 U.S. App. D.C. 144, 260 F.2d 474 (1958).

E. Consequences of Acquittal by Reason of Insanity

Bolton v. Harris, 130 U.S. App. D.C. 1, 395 F.2d 642 (1968).

Covington v. Harris, 136 U.S. App. D.C. 35, 419 F.2d 617 (1969) the "least restrictive alternative".

Lynch v. Overholser, 369 U.S. 705 (1962).

Other Matter

ABA Code of Professional Responsibility

Ethical Considerations 7-7, 7-11, 7-12.

Disciplinary Rule 7-101(B)(1).

10 American Crim. L. Rev. NO. 3 (Spring, 1972)

Symposium on Law and Psychiatry. This contains a number of valuable articles. Especially useful are:

R. Golten, "Role of Defense Counsel in the Criminal Commitment Process."

P. Chernoff and W. Schaffer, "Defending the Mentally Ill: Ethical Quicksand."

DATE:

TOPIC: The Trial I

Jencks Act

INSTRUCTOR:

TIME:

Class on Jencks Act Law and Tactics

Conduct Jencks hearing in State v. Chismo.

Assignments to be announced.

MATERIALS

The Jencks Act, 18 U.S.C. § 3500.

Shadoan, Law and Tactics in Federal Criminal Cases, pp. 203-241 (and pocket supplement).

Criminal Practice Manual, pp. 63-73.

Clancy v. United States, 365 U.S. 312 (1961).

Leach v. United States, 115 U.S. App. D.C. 351, 320 F.2d 670 (1963).

Williams v. United States, 117 U.S. App. D.C. 206, 328 F.2d 178 (1963).

Lee v. United States, 125 U.S. App. D.C. 126, 368 F.2d 834 (1966).

United States v. Augenblick, 393 U.S. 348 (1969).

United States v. Hines, 147 U.S. App. D.C. 249, 455 F.2d 1317 (1972).

Saunders v. District of Columbia, 263 A.2d 58 (1970).

United States v. Bryant, 142 U.S. App. D.C. 132, 439 F.2d 642 (1971) and opinion following remand, 145 U.S. App. D.C. 259, 448 F.2d 1182 (1971).

United States v. Dockery, D.C.C.A., #6249 (6/23/72).

United States v. Bundy, ____ U.S. App. D.C. ____, 472 F.2d 1266 (1972).

Banks v. United States, 305 A.2d 256 (1973).

DATE:

TOPIC: The Trial II

Preparing Defense Witnesses/Conducting Direct Examination

INSTRUCTOR:

TIME:

Prepare alibi witness Jack Hammer for testimony.

Assignments to be announced.

Conduct direct examination of Jack Hammer. Hammer will also be cross-examined by a prosecutor.

Assignments to be announced.

MATERIALS

1. Leading Questions

   Green, 121 U.S. App. D.C. 111, 348 F.2d 340.

   Worthy, 122 U.S. App. D.C. 242.

2. Refreshing Recollection

   Socony-Vacuum, 310 U.S. 150.

   Gaines, 121 U.S. App. D.C. 213, 349 F.2d 190.

   Robinson, 113 U.S. App. D.C. 372, 308 F.2d 327.

   McGill, 106 U.S. App. D.C. 136, 270 F.2d 329.

   Parry-Hill, 148 A.2d 715.

   Young, 94 U.S. App. D.C. 62, 214 F.2d 232.

   Ricks, U.S.C.A., 3-19-73.

3. Impeaching Own Witness

   [State Code]

   Wheeler, 93 U.S. App. D.C. 159, 211 F.2d 19.

   Belton, 104 U.S. App. D.C. 81, 259 F.2d 811.

Bartley, 115 U.S. App. D.C. 316, 319 F.2d 717.

Coleman, 125 U.S. App. D.C. 246, 371 F.2d 343.

Brown, 134 U.S. App. D.C. 1, 411 F.2d 716.

Lofty, 277 A.2d 99.

DATE:

TOPIC: The Trial III

Cross Examination

INSTRUCTOR:

TIME:

Class on Cross- Examination

Cross-examine accomplice in State v. Chismo.

Assignments to be announced.

MATERIALS

1. General: Scope of Cross-Examination

ABA Code of Professional Responsibility, EC 7-25, DR 7-106.

ABA Standards, "The Defense Function," §§ 7.5, 7.6.

Alford, 282 U.S. 687.

Clawans, 300 U.S. 617.

Gregory, 125 U.S. App. D.C. 140, 369 F.2d 185.

Brown, 119 U.S. App. D.C. 203, 338 F.2d 543.

Lee, 125 U.S. App. D.C. 126, 368 F.2d 834.

Lindsey, 77 U.S. App. D.C. 1, 133 F.2d 368.

Dixon, 112 U.S. App. D.C. 366, 303 F.2d 226.

Tinker, 135 U.S.App. D.C. 125, 417 F.2d 542.

Macklin, 133 U.S. App. D.C. 347, 410 F.2d 1046.

Grimes, 137 U.S. App. D.C. 184, 421 F.2d 1119.

Shumate, 139 U.S. App. D.C. 98, 429 F.2d 777.

Pugh, 141 U.S. App. D.C. 68, 436 F.2d 222.

Kearney, 136 U.S. App. D.C. 328, 420 F.2d 170.

Fowler, 151 U.S. App. D.C. 79, 465 F.2d 664.

Mintz, 75 U.S. app. D.C. 389, 127 F.2d 744.

Huff, 143 U.S. App. D.C. 163, 442 F.2d 885.

Walker, 146 U.S. App. D.C. 95, 449 F.2d 1171.

Young, 150 U.S. App. D.C. 98, 463 F.2d 934.

Turner, U.S.C.A., 7-25-73.

Solar, 94 A.2d 34.

2. Bias and Motive

Ewing, 77 U.S. App. D.C. 14, 135 F.2d 633.

Wynn, 139 U.S. App. D.C. 60, 397 F.2d 621.

Blair, 130 U.S. App. D.C. 322, 401 F.2d 387.

Hinkle, 145 U.S. App. D.C. 234, 448 F.2d 1157.

White, 297 A.2d 766.

McCoy, 301 A.2d 218.

3. Prior Convictions

[State Code]

Dixon, 287 A.2d 89.

Durant, 292 A.2d 157.

Carter, U.S.C.A., 7-12-72.

4. Prior Inconsistent Statement

Byrd, 119 U.S. App. D.C. 360, 342 F.2d 939.

Jones, 128 U.S. App. D.C. 36, 385 F.2d 296.

Williams, 131 U.S. App. D.C. 153, 403 F.2d 176.

Broadus, 146 U.S. App. D.C. 265, 450 F.2d 1312.

Holmes, 277 A.2d 93.

DATE:

TOPIC: The Trial IV

Miscellaneous Trial Situations

INSTRUCTOR:

TIME:

Class on miscellaneous trial situations.

MATERIALS

I. Judicial misconduct

Williams, 228 A.2d 846.

Wilson, 278 A.2d 461.

Billeci, 87 U.S. App. D.C. 274, 184 F.2d 294.

Butler, 88 U.S. App. D.C. 140, 188 F.2d 24.

Blunt, 100 U.S. App. D.C. 266, 244 F.2d 355.

Gudger, 114 U.S. App. D.C. 263, 314 F.2d 268.

Jackson, 117 U.S. App. D.C. 325, 329 F.2d 893.

Young, 120 U.S. App. D.C. 312, 346 F.2d 793.

Paylor, 131 U.S. App. D.C. 286, 404 F.2d 1263.

Barbour, 137 U.S. App. D.C. 116, 420 F.2d 1319.

Green, 139 U.S. App. D.C. 75, 429 F.2d 754.

Wyatt, 143 U.S. App. D.C. 136, 442 F.2d 858.

Burka, 289 A.2d 376.

II. Prosecutorial misconduct

McFarland, 80 U.S. App. D.C. 196, 150 F.2d 593.

Lewis, 140 U.S. App. D.C. 345, 435 F.2d 417.

Hines, 148 U.S. App. D.C. 441, 460 F.2d 949.

Smith, U.S.C.A., 4-27-73.

Whitmore, U.S.C.A., 6-29-73.

III. Misconduct by defense counsel

Coleman, 137 U.S. App. D.C. 48, 420 F.2d 616.

Hirschkop, 149 U.S. App. D.C. 212, 462 F.2d 827.

Dellinger, 461 F.2d 389.

Niblack, 476 F.2d 930.

IV. Misconduct by defendant

Allen, 397 U.S. 337.

Mayberry, 400 U.S. 466.

Dorman, 140 U.S. App. D.C. 313, 435 F.2d 385.

Bellinger, supra.

V. Trial in absentia

F.R.Cr. P. 43

Superior Ct. Crim. Rule 43.

Cureton, 130 U.S. App. D.C. 22, 396 F.2d 671.

McPherson, 137 U.S. App. D.C. 192, 421 F.2d 1127.

Wade, 142 U.S. App. D.C. 356, 441 F.2d 1046.

Campbell, 295 A.2d 498.

VI. Pro se defense

Dougherty, 473 F.2d 1113.

VII. Continuance

Jackson, 145 U.S. App. D.C. 309, 449 F.2d 971.

Green, 280 A.2d 771.

VIII. Order of Witnesses

Brooks, 11 CrL 3068.

IX. Discover of plea offer by court sitting without jury

Walker, 473 F.2d 136.

DATE:

TOPIC: The Trial V

Opposing the Examination of Witnesses

INSTRUCTOR:

TIME:

Oppose the direct examination of Janice Martin.

Oppose the cross-examination of the defendant, Mack Chismo.

149

DATE:

TOPIC: The Trial VI

Cross-Examination

INSTRUCTOR:

TIME:

Cross-examine Janice Martin

Assignments to be announced.

150

DATE:

TOPIC: The Family Division II

Juvenile Court Law

INSTRUCTOR:

TIME:

Class on Juvenile Court Law

MATERIALS

[State Code]

Superior Court Juvenile Rules 106-107.

Second Juvenile Practice Institute Manual (review) pp. 1-57.

In re Gault, 387 U.S. 1 (1967).

In re Winship, 397 U.S. 358 (1970).

In re Elmore, 127 U.S. App. D.C. 176, 382 F.2d 125 (1967).

Creek v. Stone, 126 U.S. App. D.C. 329, 279 F.2d 106 (1967).

Fulwood v. Stone, 129 U.S. App. D.C. 314, 294 F.2d 939 (1967).

Cooley v. Stone, 134 U.S. App. D.C. 317, 414 F.2d 1213 (1969).

Brown v. Fauntleroy, 143 U.S. App. D.C. 116, 442 F.2d 838 (1971).

M.A.P. v. Ryan, 285 A.2d 310 (D.C.C.A.1971).

In re M.C.F., D.C.C.A. #6062 (8/10/72).

Coleman v. Burnett, 71-1114 (USCA DC 3-14-73).

United States v. Jerome T. Bland, U.S. App. D.C. 472 F.2d 1329 (1972).

McKeiver v. Penn. 402 U.S. 528 (1971).

3.6 Back-Up Materials

The materials in this section are used to prepare the various actors who appear at different times in the *Chismo* case. The training director should carefully review all of these materials and choose, on the basis of criminal procedure in your jurisdiction, the materials which realistically prepare a certain actor. These materials, unless otherwise noted in the course description, are *not* distributed to trainees. They should, however, be distributed in advance to each actor who will be asked to play a role in the case.

Defendant Interview Memo

MEMORANDUM

TO: Files, United States v. Mack Chismo

FROM: R. Judd, Staff Attorney

DATE: 9/11/73

RE: Interview with Defendant, D.C. Jail, 9/11/73

Today from approximately 9:45 until 11:30 a.m. I interviewed the defendant, Mack Chismo, at the D.C. Jail concerning his pending charge. He gave me the following information.

Basic Data

Mack (no middle name) Chismo is a negro male, age 44, born on August 7, 1929 in Austin, Texas. His parents were Eugene Jerome Chismo and Daisy Cook Chismo, both deceased approximately ten years ago. Defendant's father was a bricklayer, and also did general handyman work. Chismo has one older brother, Otto Chismo, age 46, who resides in Milwaukee, Wisconsin where he is employed as a cement finisher. He also has two younger sisters, Mrs. Luanne Chismo Albert of Dallas, Texas (age 38) and Ms. Charismo Chismo of Austin (age 28).

Defendant says he is married to Marie Chismo, but states that they are "common law." Chismo was also married approximately 20 years ago in Texas to Jane Seymour, but they were divorced approximately two years later. He has not seen her since.

Defendant was raised in Austin, Texas, and graduated from Jubilation T. Cornpone High School there in 1946. Following graduation, he spent three years in the United States Army, and received an honorable discharge in 1950. He served as a rifleman in an infantry platoon, and states that he did not have any disciplinary problems in the military. Following his discharge, he went to Milwaukee, Wisconsin, and stayed with his brother looking for employment. He worked at a variety of jobs in the Milwaukee area, mostly building maintenance work, and some TV repair work. He also entered an apprenticeship program for training as a carpenter, sponsored by a local union, but did not complete the program.

In 1965, the defendant was arrested after a trip from Milwaukee to Chicago with a friend of his, and charged with interstate transportation of a stolen vehicle. He did not obtain release on bond pre-trial. He was convicted following a jury trial in federal court in Milwaukee, and received a one to three year sentence. He testified at the trial, and stated that he had not known that the car was stolen. He was released in late 1968 from the Federal Penitentiary at Terre Haute, Indiana, and returned briefly to Milwaukee where he sought employment. Because jobs were difficult to come by, and because defendant thought he needed a change of scenery, he came to

the Washington, D.C. area in 1969, approximately June or July. He was discharged from parole supervision in Milwaukee in March 1969.

He was arrested in Fairfax County, Virginia in November of 1972, for burglary of a service station. He pled guilty to breaking and entering two days later, and served his 90-day sentence.

Employment

Chismo's work record over the last few years has been spotty, because he states he has had trouble obtaining employment. He has done some construction work, mostly thorugh the assistance of his father-in-law, Jack Hammer, 1402 South Frederick Street, Apartment 3, Arlington (787-2623). However, it is usually for a different construction company each time, and usually the job does not last more than three or four weeks. He also obtained employment for a two month period as the maintenance man in the apartment building where he lives in Arlington, Virginia. His last employment prior to his arrest was with his father-in-law on a night shift for the Agnew Construction Company, Silver Spring, Maryland, working on a building going up at Columbia Pike and Highland Drive in Arlington, Virginia. He worked there from August 20 to August 30. He did carpentry work on this job, and believes that his performance was satisfactory. However, he states that that job is now finished, and he does not know whether he could get additional work with the Agnew Company or not.

At the time of his arrest, defendant was a student at Control Data Institute, 3717 Columbia Pike, Arlington, Virginia, studying business machine repairing.

Family

The defendant resides at 1038 South Frederick Street, Apartment 911, in Arlington, Virginia (no telephone). He lives there with his wife, Marie Chismo (age 37), and her two children from an earlier marriage, Samuel (age 8) and Susan (age 6½). Mrs. Chismo is not employed, but does some occasional day work. His employer when he did maintenance work at that building was the Robin Realty Company, and his supervisor was the building manager, Mrs. Bird.

Chismo says that a friend of theirs, Ms. Xaviera Hollander, lives in an apartment on the same floor, and has a telephone where messages can be left for the Chismos if necessary (telephone 669-6969).

Health

Defendant states that he is in good health, and denies any previous hospitalizations except to have his tonsils removed as a child. He says he is 6 feet tall, and weighs about 160 pounds. He states that he has never used narcotics, but smoked marijuana on about two occasions when he was in the service. He drinks alcohol, and on occasion says that he drinks heavily and does not recall events which occurred during the drinking bout. He says he drinks most anything he can get his hands on, but prefers Jack Daniels.

The defendent seemed reasonably articulate, and showed little difficulty in discussing his case with me and recalling most of the significant time periods. He states that he was an average student in school, but did not graduate. I detected no indications of any mental problems.

Circumstances of Offense

I explained to the defendent that he was charged with having raped and robbed a white female named Janice Martin in the early morning hours of Friday, August 24, 1973. Chismo immediately denied committing this offense and stated that he had been working on the evening shift on August 23 and 24, and indeed worked every night for approximately ten days from August 20 to August 30. His hours were from 4:00 p.m. to midnight, and he always worked two hours overtime which was the maximum permissible. He was working at this time for the Agnew Construction Company on the job mentioned earlier in Arlington, Virginia. He did some carpentry work and some wiring.

After cleaning up, he rode home with Jack Hammer, and went into Jack's apartment for a beer with him. This was their usual practice after getting off work. After one beer, or maybe two, the defendant says he walked home and arrived a little before 3:00 a.m. His wife was asleep, and he was careful to be quiet so as not to disturb her. (My impression is that Chismo has no specific recollection of the night of the 23rd-24th, but is simply stating his general recollection of his usual activities after leaving work. I did not press him at this interview.)

Circumstances Surrounding Defendant's Arrest

On Thursday, September 6, the defendant was not working, but he had heard from Jack Hammer that they would probably be working on another construction job beginning about September 8, somewhere near Baileys Cross Roads, Virginia. On that evening, Chismo went to a tavern where he had been a few times previously with Jack Hammer, for a few beers. The tavern is in the Shirlington area, but the defendant does not know the name nor the address. He states that he would be able to find it if he were out on bond. While at the tavern, he was talking to a white male named "Robert." He does not know Robert's last name, but describes him as approximately 25 years old, 6 feet tall, 175 pounds, brown hair with a moustache and beard. He first met Robert at the same tavern about a week previously when Robert had offered to sell the defendant a sewing machine. Chismo purchased the sewing machine from Robert for $10, and took it home to his wife, but she did not want it. He had since then been carrying the sewing machine around in his car in the hopes of finding someone to sell it to.

On the evening of September 6, Robert said that he had some ladders which he would like to sell. Chismo states that ladders are always useful in his work, and says that he told Robert that he would be interested. Robert said that the ladders were in the District of Columbia, and asked the defendant to drive him there. Chismo agreed, and they left the tavern at about 9:15 p.m.

Following Robert's directions, the defendant drove across Key Bridge and then made a few turns as Robert indicated. They ended up in what Chismo

thinks was the Georgetown area, in front of some nice houses on a street running North and South with a substantial incline. The defendant double-parked, and Robert got out and told him to wait. Robert then disappeared through a white fence and then was gone for some time. After waiting approximately ten minutes, the defendant got impatient and decided to go look for Robert. He did not want to leave his car double-parked, so he drove around the corner where he found a parking place, near a school for either the deaf or the blind. Chismo took the keys from the ignition, but did not lock the car, and walked back to where he had last seen Robert. Chismo went through a gate which he believes is the same one through which Robert entered and wandered around in the back yard of a couple of buildings hoping to find Robert. Not seeing him, he went through a building and headed back to the street through a narrow alley beside a house. Chismo states that it was quite dark in the alley but he noticed a credit card lying on the ground which he picked up and put in his pocket. Chismo noticed at about the point where he found the credit card that a window had been broken out of the adjacent house, or at least the screen had been cut.

He then proceeded up the street, and had gone only about 5 or 6 steps when two men in street clothes grabbed him, threw him up against a rock wall with their guns drawn, pinned his hands behind his back, and handcuffed him. He realized that they were policemen then. One of them said to the other, "This must be the dude," and they went through his pockets. They found 4 strands of rope. He had the rope in order to tie the ladders on his car. They also found the credit card.

They then turned him around to face the street. One of them told him he was under arrest for trespassing. He said, "I ain't trespassing, I'm here looking for a man." A conversation ensued, and he does not remember all of it. Something like the policeman saying, "We know what you're doing here," to which he replied, "Yes, I'm looking for the man who is going to sell me some ladders." The defendant also stated that he was a carpenter, and used the ladders in his work. After obtaining defendant's name and address, the officers then asked him, "How did you get here?" He said, "By my car, it's parked around the corner." He described his car to them and told them where it was parked.

At that point, some more officers began to appear, along with a paddy wagon. One of the first two officers left and headed in the direction of his car. Just as the officer was getting back from his car, the officers moved him down under a streetlight and a lady appeared out of a house. The defendant cannot state which house she came from. She came and stood within about 10 yards of him. She had on a bathrobe and slippers. He says she looked about 26-27, white, medium height, blond hair. He remembers he was handcuffed and there were officers in uniforms standing on either side of him and in the rear. The two plainclothes officers who first arrested him stood by the woman. She hesitated for a second, then said, "Yes, it's him, I'm sure." Then she said, "I just didn't remember the moustache." He noticed several of the officers with little notebooks who seemed to be

taking down what she said, but can't recall which officers these were. She then covered her face and sobbed and the officers led her back into her house.

He was then placed in the wagon, and shoved down on the floor. He was then taken to some police station relatively nearby, just briefly, and then to what appeared to him to be a much larger building. He later learned it was Police Headquarters. He estimates that he was arrested at about 10:15. By the time he got to headquarters, it was 11:30. He was very tired because he had worked late the night before and hadn't had much sleep. He was taken into a room and photographed, fingerprinted, and then taken into another room, placed in a chair and handcuffed to the table. An officer came in and told the defendant that he was Detective Sedgwick of the Sex Squad. He read the defendant his rights from a card, and defendant recalls Sedgwick saying that he was under arrest for rape and that anything he said could be used against him. He also told him that he had a right to a lawyer. He offered him a cup of coffee. Sedgwick then asked him to explain what he was doing in the vicinity of 1607 - 31st Street and why he had the credit card and the rope. Defendant thought that he would get a lawyer when he went to court, but didn't know that he could have one on the spot. Since he had nothing to hide, he answered the detective's questions. He says he signed a written statement explaining something about what he was doing in the area, but he doesn't remember exactly what was in the statement. After the statement the detective made him strip his clothes off and they took clippings from his head, his moustache, his torso and his pubic area.

At that point, Sedgwick turned him over to a uniformed officer who took him to the cellblock downstairs in the basement and put him in a cell. He had barely managed to doze off, when he was awakened and taken back upstairs to the Sex Squad office. He looked at the clock and it was about 4:30. This time a different officer, Detective Carlton again advised him of his rights and told him that they had determined that a sewing machine and a pocketbook found in defendant's car belonged to Janice Martin, the victim of a rape, and that she had identified him. Carlton then asked him more questions about where he got the sewing machine and the pocketbook, and he answered those questions. He was very tired and sleepy and hungry. Carlton gave him nothing to eat and no coffee. He signed another statement at about 6:30. At that point, he says, he would have signed anything. Shortly thereafter he was taken from the cellblock to a cellblock in Superior Court, where I saw him a few hours later.

At this point, we had to terminate our meeting so the defendant could go to lunch. I told him I would be talking to him soon.

PUBLIC DEFENDER SERVICE
MEMORANDUM

TO: Assistant District Attorney

FROM: [Training Director]

SUBJECT: State v. Mack Chismo

As the Assistant District Attorney assigned to prosecute this case, you would have the following information: Janice Martin, white female, 25 years, residing at 1607 31st Street, N.W. was raped and robbed in the early morning hours of Friday, August 24, 1973. Her statement given to the Sex Squad on Monday, August 27, 1973 is attached hereto. At about 10 o'clock p.m. on Thursday, 9/6/73, the defendant was observed emerging from the alleyway next to 1607 31st Street by Officers Mullen and Lee of the 2nd District Tact Section. Mullen and Lee were sitting in their unmarked cruiser across from 1607 in the hopes of observing the returning rapist. There had been a number of attacks in that area, including an attack at 1609 31st Street. The defendant proceeded to walk north on 31st Street for about 20 feet, at which point he was accosted by Mullen and Lee. The defendant had on a T-shirt and a pair of cut -off blue jeans and black tennis shoes. He is approximately 6 feet in height and weight about 160 lbs. He has a long face and a heavy moustache. He is 43 years old but he could look younger, and he has a medium Afro haircut.

According to Mullen and Lee they asked for identification. When the defendant appeared to perspire from his forehead they became suspicious. "He seemed to move his eyes in a funny way." Mullen, who is then standing behind the defendant, noticed a bulge in his rear pocket. He patted the bulge and feared it to be a weapon, and reached his hand in his pocket. The bulge turned out to be four strands of rope.

The officers knew of the description given by Janice Martin of her assailant, contained in the PD Form 251. They also knew the general facts

of the offense, including that she was tied to the bed with rope. Because he matched the description, and because they found the rope, Officers Mullen and Lee placed the defendant under arrest, and conducted a full search. The search revealed a credit card, belonging to Ms. Martin, in the defendant's right front pocket. The credit card contained her phone number and address.

The officers called for assistance, and shortly thereafter two marked patrol cars and one transport vehicle arrived, each containing two officers. After warning the defendant of his rights and informing him that he was under arrest, Mullen asked the defendant what he was doing there and where he had gotten the credit card . Defendant stated that he was looking for a friend who had accompanied him to that vicinity from Virginia and that he had found the credit card in the alleyway. Lee then asked him how he got to the area, and the defendant said that he drove his car. Lee asked him where his car was, and the defendant indicated that it was parked legally on R Street across from Montrose Park, near the School for the Deaf.

Shortly thereafter, the additional officers arrived. While Mullen kept the defendant in custody Lee went to locate the defendant's vehicle. Defendant had told the officers that it was a 1968 Ford Mustang, and that he owned it. The officer states that he went to secure the vehicle, that he entered it, rolled up the windows, and locked the doors. When the lights came on, he observed in plain view a sewing machine and a woman's wallet on the back seat. Protruding from under the right front seat, he says, was the end of a suspicious looking object. Fearing it to be a weapon, he seized the object, which turned out to be a rubber jacketed flashlight and left the car in locked condition. It was subsequently seized and towed to the police station where the sewing machine and woman's purse were removed. Those two items constitute evidence against the defendant.

In the meantime, the other officer and the uniformed men had awakened Ms. Martin and had brought her outside in her robe and nightgown. She viewed the defendant under a streetlight and made a positive identifi-

cation of him as her assailant. Defendant was than taken briefly to the Police Station. While there he made at least one and perhaps two written statements, which are still in the possession of the Sex Squad.

On the date of the offense, officers from the Mobile Crime Unit thoroughly canvassed the scene of the offense. They recovered sheets and pillow cases from the bed, a sock stuffed with a tennis ball, complainant's nightclothes, and four pieces of rope tied to the bedpost. In addition they dusted the entire apartment for fingerprints, took photographs of the apartment both inside and out, including the screen which was cut to permit entry, and took photographs of diamond-shaped footprints in the light dust under the window.

Of course, they took combings of the complainant's pubic hair, and at the time of the arrest, clippings of all portions of the defendant's body hair. In addition, they seized the defendant's shoes and forwarded them, along with the other items, to the Crime lab. As indicated, they seized the defendant's car and its contents.

By the date of the informal discovery conference you have the results of the hair and fiber analyses and the blood and spermatoza analyses. You also have the medical examination conducted at City Hospital. You do not have in your possession photographs or the tangible evidence, but you will arrange for co-counsel to view those.

WITNESS FACT SHEET - ROBBERY

1. Physical layout: Store approximate size of two man office PDS; counter runs along entire wall with cash register on counter by door. Gate lets people behind counter. Access to rear room (and freezer) from behind counter and in customer part of store; counter approximately three feet high so can see waist up of anyone on other side; entire store (inside) well-illuminated by neon-type long florescent lights; large neon light immediately over door on outside; counter approximately three feet wide. Large plate-glass windows cover entire front of store from approximately two feet off ground to ceiling (which is normal height). Front door is normal size with glass top and bottom but secured by metal mesh to prevent breaking. Heavy metal mesh gates close and padlock along plate-glass windows after store closed.

2. Persons in Store at Time: Compl., Sosnick, behind counter counting day's receipts; Harry Green, a clerk, was in storeroom located to rear of main room where freezer also located, stocking beer. One customer still lingering --somewhat intoxicated, and unable to decide what to buy. Sosnick is old (56 years) and wears glasses for close-up work (can see objects clearly outside of 20 feet away). Had glasses on at time. Compl., Sosnick, has been held up approximately ten times in the last five years and twice in the last six months (not including the instant offense). The customer remained in the store throughout the incident but left after the subject left and before the police arrived. Sosnick knows this person, vaguely, from seeing him in the neighborhood and from frequenting his establishment. Does not know his name or address.

3. Property Taken: Money in form of bills (undetermined amount and denomination; approximately $500) taken by the subject from the cash drawer itself -- subject did not wear gloves. Money was property of

Sosnick but not in his actual possession -- constructive possession. No attempt made to take anything from customer and subject did not see the clerk.

4. Physical Evidence: Cash drawer and register dusted for prints by Mobile Crime Unit who arrived on scene approximately 30 minutes after first MPDC responded. Impossible to determine sole access to register since Sosnick and Clerk all handle while transacting business throughout the day. Front door and portions of counter dusted. Money taken by subject and observed to be stuffed in his pocket (no bag, etc. used to carry it out).

5. Method of Escape: Out front door and running north on 14th Street, N.W. Good profile view obtained as subject ran along plate-glass window on sidewalk.

6. Description of Subject: No one noticed subject enter store. Sosnick first noticed subject when subject stood opposite him on customer side of counter and asked for pack of Kools. As Sosnick was reaching, the demand for money made by subject. Sosnick then turned around and had subject in view for approximately one minute. Subject was not more than three feet from compl. View while subject in store was that of full face, i.e. compl. did not obtain a profile view until subject left store and ran north along plate-glass window. Entire incident, in store, lasted no more than two minutes from time subject first asked for cigarettes until he exited the front door with money. No obstructions, other than counter, separated compl. and subject . Counter was approximately three feet high so compl. could see subject's upper portion of pants all the way to subject's head. Subject was wearing dark, long overcoat open in front. Black pants and white shirt open at collar. Had on dark

Witness Fact Sheet

glasses and a big apple hat that came down over subject's head to top of ears. Collar turned up around neck on overcoat. Subject was N/M 20 to 25 years, approximately 6 feet tall (Sosnick is five feet, 6 inches and subject appeared to tower over him medium built, weight approximately 175 lbs., no noticeable scars or distinguishable physical characteristics; dark, brown complexion, appeared to be sweating profusely. Sosnick has an automatic and knows this was type of pistol subject had.

7. Circumstances of Robbery: Sosnick had back to counter, turned when heard request for Kools. Saw gun and backed up, subject pushed "No Sale" button on cash register, lifted cash drawer out and scooped out bills. Cash drawer left on counter.

8. Report to Police: After subject left store, Sosnick yelled to Clerk to call police as he had just been held up. Clerk called from phone in storeroom. Police cruisers (two) arrived on scene within ten minutes. Four uniformed officers. Sosnick did not obtain their names, etc. One of the uniformed officers took down a brief description from Sosnick while the others interviewed the Clerk. Clerk did not see subject. The description Sosnick gave to police was, presumably, flashed over the cruisers' radio. Sosnick does not know the details of the description flashed. After this, a Det/Sgt from the Robbery Squad who Sosnick knows responded. This was Det/Sgt O'Connor. He took a detailed description from compl. which included all of above. Also called Mobile Crime Unit which responded and dusted cash register and cash drawer and door and counter for prints. Latent prints lifted from cash drawer. Det/Sgt O'Connor showed Sosnick approximately twenty polaroid photos of possible subjects which the officer had on his person. Sosnick was unable to pick anyone and indicated this to Detective O'Connor. Detective O'Connor left and said he would be in touch if any leads developed.

Witness Fact Sheet

9. Photo Identification: Approximately ten days later, Detective O'Connor visited compl. at his place of business and spread out on the counter a number of black and white photos and asked Sosnick to look through them to see if he could spot the person who had robbed him on July 15. The photos were all of Negro males and each photo had a profile and full face picture of the subject. All subjects appeared to be in their twenties. Five photos were put in one row and five photos immediately above the first. Compl. carefully looked at all ten photos without saying anything. Detective O'Connor then asked if he couldn't recognize one of them. Compl. looked again and picked the photo to far right of bottom row. He said to O'Connor that he "thought this was the person." Detective O'Connor asked compl. if he was positive. Compl. responded that he was. O'Connor said that this was a photo of Tyrone James Roosevelt who lived right around the corner and who an informant of his had said committed the robbery in question. O'Connor said they had enough information to obtain an arrest warrant and would do so.

Role Play: Officer J.D. Lee

Public Defender Service

MEMORANDUM

TO: "Officer J.D. Lee"

FROM: [Training Director]

SUBJECT: Participation in Public Defender Service Training Program

---

On September 6, 1973, you (Officer J.D. Lee) along with your partner (Officer Harold Mullen) were in old clothes surveilling across from 1607 31st Street, N.W. On August 24, 1973, one Janice Martin, W/F 25 years had been raped by a Negro male subject whom she had described as being approximately 5'11" - 6'1" high, medium build, short hair, long face and a heavy moustache. His age was 30-35 and he was very dark complected. He was wearing: maroon T-shirt, black pants, white tennis shoes. (The defendant ultimately turned out to be 43.)

The August 24, 1973 rape had a common M.O. The subject tied the victim to the bed with rope he had brought. He then had intercourse and sodomy. He told her he was coming back.

Weapons used were a hatchet and a pair of scissors. Before finally leaving, the subject took a sewing machine and TV set, stereo and purse containing personal identification, etc.

You also knew there had been rapes in the area that may also have been committed by this man and one next door at 1609 31st Street,N.W. earlier.

Therefore at about 2200 hours (10 P.M.) on September 6, 1973 you were watching to see if you could spot the man. (You were working 4-12 and had taken up surveillance at 9 P.M.) Simultaneously you and Mullen saw emerging from the alley next to 1607 31st Street, N.W. a N/M 6' tall, 160 lbs. with heavy moustache and long face and a medium bush wearing a T-shirt, cut-off blue jeans and tennis shoes. Mullen turned to you and said, "That might be our man." You both alighted from the

cruiser. The subject was walking north on 31st Street and about 20 feet from the alley was confronted by you and your partner with identification cards out.

You positioned yourself face-to-face with the subject and Mullen went slightly behind him. You asked for identification and he seemed to be sweating. So you immediately told him to pick his hands up and you checked his pockets finding nothing. Meanwhile Mullen looked him over and noticed a bulge in his right rear pocket. He figured it might be a weapon. He told the subject (who had yet to identify himself, this all having occurred in seconds) to slowly raise his hands upwards from his sides "like a bird". He then patted the pocket quickly feeling something strange, put his hand in and seized four strands of rope.

Because of the rope as well as the subject's matching the description you felt you then had probable cause to arrest the man. Mullen said, "O.K., man, we got you now. Put your hands behind your back." Mullen then cuffed him (he gave no resistance). Mullen placed him up against the cruiser while you called for a transport. At that time (prior to the arrival of the cruiser) Mullen searched all his pockets and retrieved one credit card with the name "Janice Martin" embossed along with a phone number which was later determined to be that of the complainant's.

Mullen asked him what he was doing there. He said he was looking for a friend who came with him from Virginia and that he had found the credit card in the alley. You then asked him how he got there. He said by car. He also told you, when asked, that the car was legally parked on R Street, N.W. across from the School for the Deaf, and that it was a '68 Mustang.

You left after Mullen had placed him in the transport. After that you went up to R Street to secure the car. You found the doors unlocked and the windows rolled down. As you opened the doors, the dome light went on and you observed a sewing machine on the back seat. Looking

closer you saw a wallet there also. You had leaned over the front seat in order to do so. You closed the driver's side door locking it. You then proceeded to open the passenger side door. You then noticed something sticking out from under the front seat. You had no idea what it was -- it was dark colored, perhaps black -- but it could have been a weapon. You retrieved it and found it to be a rubber jacketed flashlight. You completed locking the doors to the car and called for a crane. You were told by your sergeant that he removed the wallet and sewing machine at headquarters.

Role Play: Officer Mullen

Public Defender Service

MEMORANDUM

TO: Officer Mullen

FROM: Training Director

RE: Participation in Public Defender Service Training Program

---

You should be familiar with the memorandum to Officer J.D. Lee which sets out the facts that were known to you and to Lee as you conducted surveillance in the vicinity of 1607 31st Street. As that memo indicates, you, along with Lee, approached the defendant after he exited from the alley by 1706 31st Street, N.W. You both crossed slightly diagonally and you positioned yourself slightly to the rear and to the side, and Lee positioned himself in front. As Lee talked to the suspect, the suspect appeared to be very nervous and was moving his hands in a funny manner. In addition he seemed to be perspiring. You observed a bulge in his right rear pocket, and since you knew the person who committed the rape was armed and since he appeared to be very nervous, and since your partner gave you a familiar look, indicating apprehension, you feared the bulge might be a weapon, and you placed your hand inside his pocket and extracted the rope. You then placed the defendant under arrest and put him in the transport vehicle. Your partner in the meantime had gone to the vicinity of the suspect's car.

Office of the Sex Section
Metropolitan Police Department
Washington, D.C.
Friday, 9/7/73
12:30 A.M.

Re: Rape and Burglary I against
Janice Martin W/F 25 years of
1607 31st N.W., occurring
about 3:30 A.M. 8/24/73 inside
1607 31st St., N.W. by a N/M
in his thirties, 5'11" to 6'.

Statement of Mack Chismo, N/M 44 yrs., Born Austin, Texas, 8/7/29 to Daisy and Eugene Chismo. Subject lives with his wife Jane Marie Chismo at 1038 South Frederick Street, Arlington, Virginia #911. No phone. At present he is unemployed.

STATEMENT:

About 9 or 9:30 I left home. I went from there to Miss Lee's to pick up some money for some work I did there earlier in the day. On the way back I stopped in a tavern. There I had two beers and met this boy, Robert. I don't know if he said it was Robert or Bobby. Then about the time I finished my second beer he asked me if I had a car I told him yes. He asked me would I bring him to Washington if he paid me and filled my tank with gas. Then I told him yes but I had to go by home first. When I went home and went into the house and said something to my wife, I told her I was going to take this boy home, I don't know if I told her that I was taking him to D.C. or just taking him home. I told her I'd be straight back. I got in the car and drove at his direction. He brought me over by a short cut, over to Glebe Road and to Lee Highway to the street where I was arrested. He had me stop where I double parked he told me to wait on him that he would be right back he had to get some money. I waited double parked about five or ten minutes, I thought it would be better if I parked better so I pulled to the first vacant spot and walked back to look for him. In the process of looking for him I was arrested.

Q: Did you Rape anyone on August 24, 1973 or at any other time?
A: No.

Q: Where were you when the police arrested you?
A: I was on the street. The subject I was looking for went through a white gate and this is the time I was double parked when I parked my car I waited about 20 minutes and then I went to see if I could find him. I went through the white gate and there was two apartment buildings. So I went to the one on the left first looking for a mailbox with a name on it and then I came out the back entrance. Then I went over to the other building and looked around. I came out a little alley. That's when I was arrested.

Q: Did you have the rope in your rear pocket, if so what was it for?
A: Right, the rope I had to tie some material on my car.

Q: You have been advised of your rights and told what you were charged with. Is this statement given of your own free will, no promises or threats were made to you about giving same and it is true to the best of your knowledge?
A: Yes.

Typed by R. Sedgewick End 2:00 AM

Mack Chismo
Mack Chismo

Role Play: Detective Sedgewick

Public Defender Service

MEMORANDUM

TO: "Detective Robert Sedgewick, Sex Squad"

FROM: [Training Director]

RE: Circumstances Surrounding Confession of Defendant, Mack Chismo

---

In the early morning hours of Friday, September 7, 1973, you obtained the attached two-page statement from the defendant, Mack Chismo in this rape case. The statement involves his alleged participation in the rape of one Janice Martin which occurred on August 24, 1973 at 1607 31st Street, N.W. You were familiar with the case, and had seen, at the time you saw Chismo, (a) the police report and (b) the complainant/witness' statement, both of which are attached.

Chismo was arrested at approximately 10:00 p.m. on Thursday evening, September 6 in the vicinity of 1607 31st Street. Officers Mullen and Lee of the Second District were staking out the premises, and arrested Chismo on the scene. You first learned of his arrest at about 11:00 p.m. when Lee called the Sex Squad and you answered the phone. Lee said that he "had the man" on the 31st Street rape, and told you that pieces of rope had been recovered from the defendant's pocket. In addition, Lee told you that Janice Martin had identified Chismo on the scene.

You told Lee to "bring him [Chismo] down for questioning." You did not ask if Chismo had been advised of his rights or whether he had made any statements, and Lee did not volunteer any information on these topics.

About 11:45 p.m. on September 6, an officer from the Central Cell block brought Chismo in to the cubicle at the Sex Squad where your desk was located, and handcuffed him to a chair beside your desk. You came in as the officer was leaving, and he said "this is the guy on the 31st Street rape. He's been printed and mugged already." The officer then left.

You came in, introduced yourself to Chismo and read him his rights from your Miranda card. You then placed a Waiver of Rights form on the desk in front of Chismo and asked him to read it. He looked at it for about a minute, and you asked him "will you sign it?" Chismo said he would not want to sign it without an attorney present. You then asked "do you want to call a lawyer?" and Chismo said "no." You then told him he would be given a lawyer in court, and asked him if he wanted some coffee. He said yes and you left him to get coffee.

You returned about two minutes later with the coffee and started talking to Chismo about what he was doing on 31st Street. You proceeded to interrogate him about whether he had anything to do with the rape of Janice Martin, and eventually obtained the attached statement from him.

Throughout your discussion and the typing of the statement, you noticed nothing unusual about Chismo's appearance. He seemed coherent, and you detected no indications of drugs or alcohol. Obviously, you did not threaten Chismo but in your own mind were very anxious to get a statement from him to "cinch the case" against him for the Martin rape.

After the statement was signed (at approximately 2:00 a.m.) you took hair samples from Chismo's head, his mustache and his pubic area. He was then returned to the Central Cellblock and you went home. (You worked starting at 4:00 p.m. on Thursday, September 6, and were due to go off duty at midnight. However, because you knew that Chismo was being brought in, you stayed late.)

Miranda Warning Form (for Detective Sedgewick)

PD 47
REV. 8/73

METROPOLITAN POLICE DEPARTMENT
WARNING AS TO YOUR RIGHTS

You are under arrest. Before we ask you any questions, you must understand what your rights are.

You have the right to remain silent. You are not required to say anything to us at any time or to answer any questions. Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we question you and to have him with you during questioning.

If you cannot afford a lawyer and want one, a lawyer will be provided for you.

If you want to answer questions now without a lawyer present you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer. P-771

WAIVER

1. Have you read or had read to you the warning as to your rights? _____
2. Do you understand these rights? _____
3. Do you wish to answer any questions? _____
4. Are you willing to answer questions without having an attorney present? _____
5. Signature of defendant on line below.

_____

6. Time _____ Date _____
7. Signature of officer _____
8. Signature of witness _____

J-4730-74

Memo to Officer Mullen re: Testimony

Public Defender Service

MEMORANDUM

TO: Officer Mullen

FROM: William W. Taylor, III

SUBJECT: Testimony at Hearing to Suppress Identification

You should be familiar with the facts and circumstances surrounding the arrest of the defendant Mack Chismo described in earlier memoranda to the Assistant United States Attorney, and to you and to Office Lee. In addition, you should know the following facts:

1. After transport vehicles arrived and after Office Lee returned from Chismo's car, you and Officer Lee left Chismo in the custody of two uniformed officers, one black and one white, and went to the door of the basement apartment belonging to the complainant, Janice Martin. At that point, it was approximately 10:30 p.m.

2. You knocked on the door, and Ms. Martin answered, clad in her housecoat. She knew Office Lee from a previous meeting, and you introduced yourself. You stated that you had a subject whom you would like her to look at in connection with the offense committed against her. She was reluctant to come out, but you told her that it would only take a minute, and that it was just routine.

3. She agreed and walked out between you and Office Lee to a point approximately 10 yards from where the defendant was standing with the two uniformed officers under a street light. At that distance, she looked in his direction, said "yes that's him I'm sure," and began to cry, putting her face in her hands. You then escorted her back into her apartment. There was another person in the apartment as well, a female friend of Ms. Martin.

4. At no time did you suggest to her that this was in fact the person who raped her, nor did you tell her of the discovery of the material in Chismo's car. She was asked to identify the credit card, but you are sure that that was shown to her after she had made her identification of the defendant.

Role Play: Janice Martin (Jencks Hearing)

Public Defender Service

MEMORANDUM

TO: "Janice Martin"

FROM: [Training Director]

SUBJECT: Jencks Hearing

The purpose of this exercise is to give the trainees skills and experience in finding and securing documents under the Jencks Act. They will be told that you have completed your direct testimony and that they are to proceed, without any other specific directions.

They should ask you about the various statements that you have made to policemen and others. You have the following perceptions and information:

1. A uniformed officer appeared at your home about a half an hour after the offense was reported. His name was Thomas Dinger. He asked you to give him a description of your assailant, which you did. He immediately walked to the telephone and called, and you could hear him relaying the description to another person.

He then returned to you and asked you to tell him what happened. You did so, and you observed him writing what you told him on a piece of paper which appeared to be a form. He filled in both pages of the form in long-hand. He took no notes, other than what he wrote on the form.

2. As Officer Dinger was completing the form, an officer from the Sex Squad arrived with several other officers. You do not remember his name, but you remember what he looked like (a description will be given to you before the exercise). He walked with you into your kitchen, and you sat down at the table, and had a cup of coffee while he asked you questions. As you talked, you observed him writing in a small looseleaf book. He did not read back to you what he wrote, but as you talked, he

would frequently repeat phrases that you used. You have never seen the notes or the notebook. You talked to him for a period of roughly 10 minutes, and although you do not remember word-for-word what you told him, it is exactly what you have testified to on direct examination. You finished your interview with him about 8 a.m.

3. You gave a written statement to the Sex Squad on the following day. (That statement will not be an issue at this hearing.)

4. On the day you went before the Grand Jury, you told the substance of your testimony to a girl sitting in an office outside the Grand Jury room before you went into the Grand Jury. As you told it to her, she typed out a summary of your testimony. This took about 10 minutes. When she had finished typing, she showed you the document. You made no changes in it, and although it was not as detailed as your testimony either in the Grand Jury or here today, it was accurate.

Role Play: Detective Corcoran

Public Defender Service

MEMORANDUM

TO: "Detective M.C. Corcoran"

FROM: [Training Director]

SUBJECT: Jencks Hearing

The purpose of this hearing is to give the trainees some practice and skill in locating and securing Jencks material. As a detective in the Sex Squad, you responded to the scene of an alleged rape on the morning of August 24, 1973, at approximately 7:45 a.m. The address is 1607 31st Street, N.W. There you met the complaining witness, one Janice Martin. The uniformed officer was just completing the 251 when you arrived, and you immediately took the complaining witness into the kitchen, where you interviewed her alone.

You talked with her for about 10 minutes, during which you took notes of your conversation. The notes are not completely verbatim, but parts of them do contain direct quotes. It is your practice when you take notes of an interview to take down words and phrases from which you can later write a report. Thus, you are unable to say which of the words are more likely to be direct quotes than others.

You never read the notes back to the complaining witness, nor did you let her look at them. You have now destroyed the notes, as is your practice. You only keep your rough notes for six months, and we will assume that the trial is taking place more than a year later. In any event, everything that was important that was in your notes you incorporated in the Sex Squad report that has been turned over to the District Attorney. There is some possibility that the notes might be in the trunk of your car, where you keep a lot of junk, but you have looked through it once at the request of the District Attorney, and were unable to find them.

The scenario that I expect is that the Judge will order the State

to produce them or to suffer the consequences. At that time, we will take a recess and you will go look through the trunk of your car one more time and produce them. At that point, there may be some more discussion about whether or not they were verbatim, but we will leave that up to the persons conducting the hearing.

Public Defender Service

MEMORANDUM

TO: Attorney for Mack Chismo

FROM: Student Investigator

SUBJECT: Interview with Jack Hammer 9/15/73

Pursuant to your request, I conducted an interview with Jack Hammer on 9/15/73 at his home at 1357 South Frederick Street, Arlington, Virginia, and I obtained the following information:

1. Mr. Hammer is 55 years old, and lives with his wife and two daughters in their mid-twenties. He has a grown son who lives away from home. A third daughter is married to the defendant.

2. He has known the defendant for about two years, since shortly before his daughter Jane Marie married him. During that period he has been responsible for keeping the defendant employed. He is himself a licensed electrician, and works regularly on a sub-contract basis in construction of large buildings. He says that although the defendant claims to be an expert in electronics, he really is not qualified to do anything but carpentry and some simply wiring. When he (meaning Mr. Hammer) takes a job he either employs the defendant himself or gets him a job with the prime contractor.

3. He says that he has never known the defendant to have any unusual sex hangups, as far as he knows. He says we better talk to his wife about that.

4. He knows the tavern that the defendant refers to, but he does not know anyone who comes there by the name of Bob who fits the description.

5. He is fairly certain that at the time of the assault, if it is

to have occurred about 3:15 a.m. on 8/24, defendant could not have done it, because he and the defendant were working on a job for the Agnew Construction Company at Columbia Pike and Highland in Arlington at that time. From 8/20 to 8/30, they were working a 4 to 12 shift, and they almost always put in overtime, at least two hours.

6. By the time they washed up, it would be about 2:10 a.m., and it would take about 20 minutes to drive home. Mack would stop by for a beer, and then would walk to his own home about three blocks away.

7. He is fairly certain that his procedure was followed on Thursday, 8/23 and Friday morning 8/24 because he remembers it was on a Thursday night when they were wiring for the air conditioner and the furnace, and they worked at least until two because they had to get the job finished for the inspectors who were coming on the weekend.

8. He likes Mack and will do anything he can to help.

Public Defender Service

MEMORANDUM

TO: "Janice Martin"

FROM: [Training Director]

SUBJECT: Testimony of Janice Martin in State v. Chismo

---

1. Attached hereto you will find a statement given by Janice Martin to the Sex Squad. It is a fairly complete narrative of the events which transpired on the night of the rape. You should become thoroughly familiar with it.

2. In addition to what is stated in her statement, you should know that she was able to look at her assailant's face for a period of about three seconds as she awoke and observed him moving towards her bed. She got a good look at him though, and she will never forget that face.

3. There was one light on in her bedroom, a table lamp, located about 10 feet from the bed and to the right (of a person lying face up.) The door to the bedroom opens at the foot of the bed, and her assailant may have come between her and the light at some point. During the entire episode, after her initial view, she never saw his face again.

4. On the night of September 6th, at about 10 o'clock p.m., she was still living at her 1607 31st Street address. And she was preparing to leave that address to go to live with friends, and also not to return home to New Jersey. A friend of hers, Beverly Earle, was staying with her that evening. They both heard a good deal of noise at about 10 or 10:05, and they observed police cars pulling out on 31st Street, heard sirens, and saw the lights flashing. "We really didn't know what was going on." In a few minutes, two officers came to the door. Officer Mullen and Officer Lee. (She knew Mullen and recognized him, because he had been by previously to find out if she had received telephone calls from any suspicious males.

At that time, he had informed her that a stakeout was in progress for her house and the rest of the neighborhood, and that "If he comes back, we will get him."

4. Mullen said to her "Would you come down and look at a subject who has been arrested." She was very reluctant and very frightened and said "Do I have to"?

Lee stated "It's just routine madam it will all be over soon and we will leave you alone."

She agreed and accompanied them out the door and down the steps through the yard to the sidewalk. She remembers asking some questions on the way, about where the man had been arrested, and being told that he had been arrested on 31st Street. She now knows that he had been seen coming through the alley next to her house, but she is not sure whether she was told that prior to identifying him. She is sure that the police officers would not have done anything to influence her, and besides, she is positive that he was the man.

She didn't want to get too close to the defendant, because she knew him the minute she saw him. About 10 yards away, she stopped and viewed him under the street light. She remembers the lighting was adequate. She said something like "I am positive, that's him" and then began to cry. She remembers also that there were other people standing about, including neighbors, passerbys and other police officers. She does not know whether anyone was taking notes.

She remembers identifying her property at various times, including the credit card, the sewing machine and the pocketbook. She thinks that she identified the credit card that night.

Office of the Sex Section
Metropolitan Police Department
Washington, D.C.
Monday, August 27, 1973
Time: 2:30 p.m.

Ref. Rape and Burglary I committed against Janice Martin, white female, 25 years old, of 1607 31st Street, N.W. Basement Flat, occurring about 3:30 a.m. by Friday, August 24, 1973, inside the above residence, by an unknown N/M mid 30's.

Statement of the Complainant Janice Martin, white female, 25 years, born September 21, 1946 in New York, New York, to Marsha (nee Smith) Martin and Thomas Martin. The complainant is single and lived alone in the basement of 1607 31st Street, N.W. She will be moving soon to 2803 Q Street, N.W. (temporary residence). The complainant is presently unemployed. Statement taken by PRC. Susan B. Moore in the Sex Section Office.

STATEMENT:

Last Thursday night, August 23, 1973, I went out at about 11:30 p.m. to a friend's house at 1220 1/2 31st Street, N.W. I left her house and got back home about 3:00 a.m. Friday morning. As soon as I got into the house, my dog started barking and I thought I heard some noises outside but decided that I was justimagining things. I went on to bed and fell asleep about fifteen minutes later but kept waking up because my dog kept barking. At one point, I was awakened by the bedroom door opening. I had the light on next to the bed and when I opened my eyes this Black guy was standing over me and capped his hands over my mouth and he had a hatchet and a pair of scissors in his other hand ready to swing down on my head. He told me to turn over and not to look at him. He told me that he wasn't going to hurt me. My dog was still barking and the guy told me to get up and put the dog in a closet or he would kill the dog. He had me walk in front of him and not turn around or look at him. While we were walking he tapped me on the shoulder with the hatchet so I would know he still had it and had better not be uncooperative. Then he had me lay face down on the bed after I put the dog in the closet and he tied my wrists to the headboard and my ankles to the legs of the bed. He tied me with some heavy cord that he had apparently brought with him. He was moving around the room there in back of me and then he started talking to me andtold me that he had been sent there because I didn't like black people and that he knew that I was a prejudiced white bitch. He went in that general vein for awhile and then he kept walking around the room. All of a sudden he came over to me and ripped off my underpants and started using his mouth on me. Before he started, though, I was able to break one of my hands loose and he hit me two times in the head with

his fist and then one time very hard with the hatchet. I had screamed when I got my hand loose and that's why he started hitting me. After I screamed he stuffed a tennis ball inside my mouth and pulled off my pillow case and gagged me with it. Then he made me get up on my knees and he put his penis in my vagina. After this he asked me if I would like it if he would undo the ropes before he left and I nodded yes. With the scissors he had he cut the ropes from the bed. Then he told me to get up and he put my nightgown over my head and he told me to walk into the living room. When we got into the living room he told me to pick up my purse and give him the money. He took the nightgown off my head for a second and then I looked in my wallet and it was empty. So then I looked into my checkbook and the money I had had in there was gone also. I figured he must have already taken it since I know I had it when I got home at about three o'clock (3:00)a.m. Missing from my wallet were a number of business cards, my driver's license, my automobile registration, my unemployment ID card, and $28.00 in cash. Then he put the nightgown back over my head and he said well you know you're going to have to do it again, and he made me lie down on the floor on my back with the nightgown over my face. He did the same things to me again. While all of this was going on he was talking to me about taking some of my things. He asked about my record player and I said for him to take it. I told him it didn't work but he said he thought he would take it anyway and fix it up. Then he told me that I was really basically a nice person and he didn't realize that he was going to be doing this to a person like me and he was sorry. He was just generally apologetic. Then he became angry again and threatened that if I ever told the police he would find me wherever I was and kill me with the hatchet. Then he said he might even consider giving me back my TV and sewing machine if I didn't go to the police. He said that he wasn't going to give them to me right then but that he would call me on Saturday and tell me where I could meet him to get the stuff back. He told me to just lie there and not to move for fifteen minutes. He went out once and apparently loaded some stuff into his car and then he came back in a minute and a half later (I was counting the seconds) and he said that he just wanted to see if I knew how to do what I was told to do. Then I heard the door close and a few seconds later I heard a car door slam and a car start up and drive away. It sounded like a newer car, American car, probably a heavy car, a sedan type. It had no unusual sounds and seemed to drive smoothly and start up easily. It sounded like it was parked right in front of the building. I

probably waited three or four minutes and then I got up and let the dog out of the closet and just sat there for a few minutes. I looked at the clock and it was 6:15 a.m. After a few minutes I called a friend and he told me to call the police right away. I was terrified about calling the police because of the threats, and I called another friend, who called the police for me. The police arrived about 7:35 a.m.

We discovered that he had gotten in by cutting the screen out of one of my living room windows. He had taken with him the hatchet and scissors (which I found out later were taken from the man's tools upstairs --Mr. Snyder). He also took my sewing machine: Sears Kenmore, Serial #1207; my 12-inch Panasonic portable TV (black and white), two tone grey in color, serial number unknown; my 1957 Emerson portable hi-fi set, which does not work. It had a red vinyl top with a white body and brown buttons. He also took my brown leather key case with some where around ten keys in it, including my house and car keys. Also stolen were my ID cards, which I have already described and about $28.00 in bills, and my pocketbook.

The guy who assaulted me was a Negro, in his 30's, about five feet eleven inches to six feet one, about medium to stocky build, very muscular, very dark-skinned, short hair, clean shaven. His nose was sort of straight and not too wide and his eyes were smallish. He head was squarish. There was an odor on his breath but I couldn't tell what it was. He was wearing a maroon golf shirt and a pair of black pants and sneakers.

Susan Moore
Susan M. Moore
Completed 3:50 p.m.

Janice Martin
Janice Martin

3.7 Guide to Procedures

As part of the materials given to new staff attorneys PDS prepares guides to procedures for each of the courts in which it represents clients. In addition it also prepares guides on fact investigation and jury management. These technical memoranda set forth the mechanical details of operations in the criminal justice system and are invaluable for helping new attorneys find their way around.

As models for your training program, the PDS memoranda are reproduced in the Appendices. Clearly, the guides are inappropriate for your situation, but they can give you a good idea of what such guides should contain. In most instances, you will probably be able to leave the general format intact, and just change the details of location, time, and names of officials. The memoranda included in this package are:

- Guide to Procedure - Superior Court, Criminal Division
- Fact Investigation
- Policies and Practices in Regard to Investigation of Criminal and Juvenile Cases
- Care and Management of the Deliberating Jury.

4. JURY PRACTICE COURSE

At the Public Defender Service of Washington, D.C., the Jury Practice Course for entry-level attorneys is taught six months after the general criminal practice course ("Chismo" case). The timing of training conforms to the case assignments of new attorneys who do not handle jury trial cases prior to this training input. Most of the new attorneys, however, would have experience at this point as co-counsel in jury cases.

The following two-day course description focuses on five principal aspects of jury practice: (1) Voir dire, (2) Relations with U.S. Attorney's Office, (3) Opening Statement, (4) Closing Argument, and (5) Plea Bargaining. These sessions require local modification and are particularly amenable to the experience and creativity of a local defender service.

Some of the assignments in this course relate to the "Chismo" case, e.g. make an opening statement in the case of *State v. Chismo*. It will be necessary, therefore, to bring the trainees up to date on the status of the motion and the evidence in the case.

Public Defender Service

MEMORANDUM

TO:

FROM: Training Director

SUBJECT: Training Sessions - March 15 and 16

Following is a list of topics to be covered in the upcoming training sessions and the time and instructors for each session. Attached are the assignments and materials.

Friday, March 15	10:00	Voir dire
	2:00	Relations with U.S. Attorney's Office
	3:30	Opening Statement and Miscellaneous Considerations
Saturday, March 16	10:00	Closing Argument
	2:00	Plea Bargaining

Public Defender Service

MEMORANDUM

TO: Voir Dire Training Class

FROM: Training Director

SUBJECT: Materials for Voir Dire Class

You should have in your possession a PDS memo entitled "Legal & Tactical Aspects in the Voir Dire of a Prospective Jury Panel." Please read it with care. Please read the following cases on the case list therein: II; B; 3,4,5, & 6 (Cockerham; Robinson; Harvin & Ridley); II; C; 1,2, &3 (Sims; Frazier & Carpenter). Also the statute and the Rule cited in Part I. Please add to the list U.S. v. Dellinger, 472 F.2d 340 (7th Cir. 1972) and read pp. 366-376. The Bryant case mentioned on p. 4 of the memo appears at 471 F.2d 1040 (1972) and should also be read in connection with Ridley. The citation for Daniels v. U.S., mysteriously mentioned at the bottom of p. 2 (Part II; E; 2) is 123 U.S. App. D.C. 127; 357 F.2d 587 (1960), but it need not be read in preparation for this class. Also please add to the list in the memo in connection with Ham v. Aldridge, Ross v. Massachusetts, 42 U.S.L.W. 3331 (12/4/73).

Many of the cases noted above will be thrown at you by name only by judges when you start to appear in adult court. I urge you to familiarize yourself with them now rather than after being burned.

Attached is a sample voir dire. Please read it and think about it -- not only about what is included but also about what is left out.

VOIR DIRE

Introduce self -- going to ask you a number of questions: not to embarrass -- but to assure Defendant a fair trial.

Identify defense witnesses (with addresses). Know any?

1. Are any of you lawyers or law students, or have any of you in the past ever studied law -- or are any of you studying law now:

1(a). Relatives, neighbors or personal friends who are lawyers or who are presently studying law.

2. Do any of you now or have any of you in the past worked in the Courts or for the United States Attorney's Office; Corporation Counsel's Office; relatives, personal friends, or neighbors who presently work for, or who in the past have worked for the Courts, the United States Attorney's Office or the Corporation Counsel.

3. Do any of you now or have any of you in the past ever worked for a law enforcement agency, such as the Metropolitan Police Department of the Federal Bureau of Investigation -- or as special police officers unattached to governmental agencies; relatives, personal friends or neighbors who presently or in the past have worked for law enforcement agencies.

4. Have any of you sat previously on juries in criminal cases either during this month or on previous occasions? Have any of you ever had Mr. Hiby as a prosecutor in previous cases on which you have sat?

5. Have any of you ever talked to a prosecutor following a trial of a criminal case or spoken with a court report or a deputy United States Marshal?

6. Have any of you ever sat on a grand jury in the District of Columbia or elsewhere?

7. Are there any of you who are inclined to give more weight to the testimony of a law enforcement officer as opposed to other persons, simply because the person is a police officer?

8. Are any of you familiar with the scene of the crime in question in the case (3635 Tenth Street, N.W.)?

9. Have any of you read about this case in the newspapers, heard about it over television or radio or in any other way had discussions pertaining to a homicide which occurred at 3635 Tenth Street, N.W. In August 1969?

10. (Did any of you know the deceased, Leroy Gaskins?)

11. The Defendant, Mr. Moore, has been charged in an indictment to return by the grand jury. Do any of you believe that because a person has been charged by the Government with a crime that he must therefore be guilty of the crime?

12. Do any of you have an opinion right now as to whether Mr. Moore is guilty of the offense with which he is charged?

13. In a sense, you should have an opinion to the effect that Mr. Moore is innocent, because the law presumes that a person is innocent until proven guilty beyond a reasonable doubt. Do any of you reject that proposition, i.e., the proposition of law which requires you to presume a person innocent unless his guilt be established beyond a reasonable doubt?

14. Would any of you be reluctant to apply, or would any of you be unwilling to apply, the principle of law that says the Government's burden is to prove a person guilty beyond a reasonable doubt, and that further requires a jury to declare a Defendant not guilty unless the Government has met its burden of proof?

15. There is a great deal of publicity about crime in the city of Washington. This is a homicide case and the facts of the case are not present. Do any of you feel you could not sit and fairly try a case of this nature?

16. Are there any of you who would rather not sit because this is a homicide case, or perhaps because you would find it exceedingly uncomfortable?

17. A principle defense in this case is that of alibi, meaning that the Defendant was not present when the crime occurred -- he was somewhere else. Independent witnesses will testify as to where the Defendant was at the time of the crime's commission. Do any of you harbor

a prejudice against the defensive alibi in a criminal case -- or do any of you just feel that such a defense is normally unworthy of belief?

18. Have any of you in the past ever been witnesses to a crime?

19. Have any of you ever been victims of a crime?

20. Have any of your relatives,personal friends or neighbors ever been victims of a crime or witnesses to alleged criminal conduct?

LEGAL & TACTICAL ASPECTS IN THE VOIR DIRE
OF A PROSPECTIVE JURY PANEL

I. Statute and Rule Sources

A. Rules (SCR & FRCrP)

1. 24(a) - conduct of examination
2. 24(b) - No. of challenges
3. 24(c) - alternate jurors

B. Statutes

1. 23-105(a), (b) and (c) - challenges
2. 23-105(d) - grounds for setting aside verdict based on jurors bias (must compare this new section with prior case law)

II. Cases

A. Questioning by Court

1. Ham v. South Carolina, 409 U.S. 524 (1973)
2. U.S. v. Cockerham, 155 U.S. App.D.C. 97, 476 F.2d 542 (#71-1955, dec. 3/28/73)
3. Bailey v. U.S., 53 F.2d 982 (CA5 1931)

B. Particular Questions

1. Ham v. South Carolina, 409 U.S. 524 (1973)
   (racial must be allowed, hair length need not be)
2. Bumpus v. Massachusetts, __U.S.__, 36L.Ed.2d 407 [13 CrL 4028] (4/25/73)
3. U.S. v. Cockerham, 155 U.S.App.D.C. 97, 476 F.2d 542 (#71-1955, 3/28/73) insanity
4. U.S. v. Robinson, 154 U.S.App.D.C. 265, 475 F.2d 376 (#24,809, dec. 3/7/73) (self-defense)
5. Harvin v. U.S., DCCA, 297 A.2d 774 (dec. 11/29/72)
   credence to police
   U.S. v. Dellinger, 472 F.2d 340
   peremptory challenges
   Vietnam War, hippies, yippies & freaks
6. U.S. V. Ridley, 134 U.S.App.D.C. 79, 412 F.2d 1126 (1969) (crime victim)
7. Brown v. U.S., 119 U.S.App.D.C. 203, 338 F.2d 543 (1964)
   credence to police -- cited approvingly in Harvin, supra
8. Sellers v. U.S.,106 U.S.App.D.C. 209 (1959)
   police credence
9. Aldridge v. U.S., 238 U.S. 309 (1930)
   racial, precursor to Ham.

C. Challenges

1. Sims v. U.S., 132 U.S.App.D.C. 111, 405 F.2d 1381 (1968) -- in murder of cabbie, those who are or related to cabdrivers challengable for cause
2. Frazier v.U.S., 335 U.S. 497 (1948) government employee strikeable for cause only if can show demonstrable pro-government bias
3. Capenter v. U.S., 69 U.S.App.D.C. 306, 100 F.2d 716 (1938) - when juror knows lawyer - test for cause challenge.

D. Prospective Juror's Concealment of Correct Answer

1. Turner v. U.S., 135 U.S.App. 59, 416 F.2d 815 (1969)
2. Jackson v. U.S., 129 U.S.App.D.C. 392, 395 F.2d 615 (1968) juror concnerned involved in similar love tryst ending in murder -- reversed.
3. See 23 D.C. Code 105(d).

E. Miscellaneous

1. Maxwell v. U.S., DCCA 297 A.2d 771 (#6324, dec. 12/7/72) bizarre facts, counsel did not see jury list, OK.
2. Daniels v. U.S., supra at p.4.

III. Tactics

A. Preparation

All voir dire questions (other than the old chestnuts) must be in written, submittable form. We can no longer count on any judge allowing us to conduct our own examinations. Many judges will decide at the last minute to conduct the questioning. If your requested questions are not ready for submission, you may be left without recourse. Secondly, unless you subscribe to the theory that any 12 people would be good jurors (most often endorsed by judges with one eye on the clock and the other on the calendar) you will want to ask questions designed to probe the prejudices and predilections of the panel. If you have considered the exact questions beforehand you will be better prepared to justify them when objections are raised.

B. Who Conducts The Hearing

A judge has almost unbridled discretion to determine who asks the questions. Rule 24, SCR: Ham v. South Carolina, supra. Among defense counsel, there is divided opinion as to whether it is better for counsel or the court to ask the questions. Advantages of counsel inquiring are: (1) counsel can attempt to build a relationship with the panel at the only juncture a lawyer can speak personally to a juror; (2) his questions

need not be cleared in advance; (3) his questions are worded exactly as he wants them and he can follow up more easily after the prospective juror responds; and (4) in situations where it appears the question should be answered at the bench he can more easily have the juror come up without court objection. The major advantages to the court inquiring are: (1) the panelists are more likely to answer the questions truthfully, and (2) the questions concerning presumptions of innocence, reasonable doubt, etc., carry the authority of the judge when he asks them. This advantage applies only when you can convince the judge to ask your requested questions.

If you feel that you should conduct the inquiry, then you should argue to be allowed to do so. The main reason judges prefer to conduct voir dire is to save time. If your questions are written out and you are going to ask a fixed number, then the judge may relent.

C. Responses To Questions: In Public Or Private

The Bryant case indicates we are very far, indeed, from individual private voir dires. The next best thing is a response at the bench. The Ridley decision indicates the "victim of crime" should be handled at the bench. The rationale is that prospective jurors will be prejudiced by the prior-crime horror stories given by their colleagues. This rationale is true for other questions and answers as well: (1) Do any of you not want to sit in this case for whatever reason?; (2) Do any of you know the witness Reverend Jones? (the danger is, of course, that a few parishioners on the panel will rise and canonize the witness; and (3) in specific cases, particularly rape, narcotics, homicide, or when a panelist indicates that he has been on several petit juries that month when you probe into profound areas of beliefs and moral precepts. Responses at the bench are much more conducive to candid answers than public questioning. Even though it takes more time, you should insist on delicate responses handled at the bench.

One problem with the en masse voir dire is the lack of opportunity to size up each juror via a face-to-face conversation. There always seems to be a majority of jurors who respond to no questions at all. Obviously, even the existence of an accent may be helpful in deciding whether a panelist would be a good juror. Thus, questions having the possibility of many people answering should be carefully planned. Some suggested questions of this type are (of course always tailored to the facts of your particular case) are: (1) Do any of you shop at Safeway stores?; (2) Do any of you read the Post crime & justice section regularly; (3) Are any of you veterans of the armed services?; (4) Have any of you served on a petit jury before?; etc. These and others you can devise must be, and almost always can be, justified by the nature of your case.

Another problem is identifying the juror(s) who are likely to capitulate in favor of a fast verdict. Since most verdicts are of guilt, it is safe to say that people with time problems or antipathy to staying late should not be on our juries. Thus, the panel should always be asked some form of this line of questioning: "Do all of you understand that the jury in this case will not be sequestered" (2) "However, Judge _____

conducts trials from 9:30 A.M. to 6 P.M. Would these hours cause any of you to feel pressures of time hampering your careful, considered deliberations because you have responsibilities at home such as cooking dinner, relieving your babysitter, picking up your spouse or arriving to your carpool on time, or any other reason?" So many times an otherwise good juror will stop hanging a convicting jury because he or she wants to get home to discharge responsibilities.

D. Suggested Questions Areas

There is a list of possible voir dire questions on p. 108 of the 9th Annual Criminal Practice Manual. In addition, there are references in the library which can help in framing your questions. Judges must allow questions about race, Ham, supra and defenses, Cockerham, supra, about which there is community division of opinion and for which justification can be made. Further, read Cockerham for suggestions as to how to frame questions the Court must ask. Cf. Ham v. S.C., supra.

1. ADVERSE FACTS -- It is always a good idea to inquire on voir dire about jurors' attitudes toward damaging and possibly inflammatory facts which you know are going to be brought out. They should hear these things even before the trial begins so as to lessen the impact later.

E.g.: (1) You may hear swear or cuss words in this trial. Would any of you be so uncomfortable after hearing these words in this courtroom that you would lose your impartiality; (2) Frank discussions of sexual acts and parts of the body will be mentioned ... (3) the Defendant will testify in his own behalf and he has been convicted of X... (4) the Defendant's mother will testify that the Defendant was home with her at the time of the robbery, would any of you disbelieve her just because she is his mother?; and so forth.

2. ATTITUDES TOWARDS DEFENSES -- Go deeply into controversial defenses such as insanity and intoxication. Inquire as to magazines read, volunteer work, occupation of spouses, incidence of insanity or alcoholism in their families. When consent is a defense to rape, you do not want a woman on your jury who evidences sensitivity to the issue by belonging to women's consciousness groups or reads magazines such as "Ms.", for example. (Although we clearly need these women to build a just society, your client will have difficulty understanding that in his cell.)

E. Mechanics

Rule 24, S.C.R., outlines the method by which juries are selected; i.e., strikes are made confidentially at the bench.

In the courtroom you will receive the master list of jurors for the month in numerical order. As soon as the panel arrives, you will be given the list of the prospective jurors. Upon getting the list, it is a good idea to jot down pertinent information from the master next to the panel names. Always draw lines separating the names so as not to become confused later. Use that list during questioning to take notes. The jurors' names are called in order of their appearance on the panel list. When

striking always look ahead to see whom you are replacing the juror with.

Many lawyers prepare a chart to aid in the striking process. This chart looks like this:

Strikes

G D

1	2	3	4	5	6	ALT 1
7	8	9	10	11	12	ALT 2

As the jurors are called, place their numbers in the appropriate box. As they are struck, cross out the number and replace it with the new one. This way you will not become confused.

DATE:

TOPIC: Opening Statement and Miscellaneous Considerations

INSTRUCTOR:

TIME:

Assignment: Prepare to conduct opening statement in United States v. Chismo.

Materials:

Bailey & Rothblatt, Chapter 4, Opening Statement to the Jury

Amsterdam, Segal & Miller, Chapter 25, Trial: General Characteristics; The Opening Stage and Opening Statements

Cases:

Hampton v. United States, 269 A.2d 441 (1970)

Spears v. United States, 281 A.2d 287 (1971)

Amos v. District of Columbia, __A.2d __, No. 7069, decided 9/11/73

Also, read the other materials on jury trials and be prepared to discuss them. They include:

(1) Amsterdam, Segal & Miller, Chapter 23, Election or Waiver of Jury Trial; Pre-trial Matters Relating to the Jury.

(2) PDS Memorandum, Care and Management of the Deliberating Jury.

(3) PDS Memorandum, Access to U.S. Attorney Files on Prospective Jurors.

DATE:

TOPIC: Final Argument

INSTRUCTOR:

TIME:

Assignment: Prepare to give final argument in United States v. Chismo.

Make the following assumptions:

(1) All defense motions were denied

(2) Complaining witness testifies as per her statement, and says that when she said "clean shaven", she meant beardless, but that in fact the man had a moustache. She denies ever saying to Detective Woo that her assailant did not have a moustache.

(3) Defense calls three witnesses: Defendant's barber, who testifies that defendant had a substantial moustache at the time of the offense; Detective Woo, who testifies that the complaining witness told him a few hours after the incident, "He didn't have no moustache"; and the alibi witness, Jack Hammer, who testified that the defendant was with him at the construction site and later at home.

Pay particular attention in your argument to the testimony of the accomplice and to the suggestiveness, if any of the identification procedures.

Materials:

Gibson v. United States, 131 U.S.App.D.C. 163, 403 F.2d 569 (1968)

Garris v. United States, 129 U.S.App.D.C. 96, 390 F.2d 862 (1968)

Harris v. United States, 131 U.S.App.D.C. 105, 402 F.2d 656 (1968)

Taylor v. United States, 134 U.S.App.D.C. 188, 413 F.2d 1095 (1969)

Bradley v. United States, 136 U.S.App.D.C. 339, 420 F.2d 181 (1969)

United States v. Hayward, 136 U.S.App.D.C. 300, 420 F.2d 142 (1969)

United States v. Sawyer, 143 U.S.App.D.C. 297, 443 F.2d 712 (1971)

United States v. Hawkins, ___ U.S.App.D.C.____, 480 F.2d 1151

United States v. Whitmore, ___U.S.App.D.C.____, 480 F.2d 1154

Gains v. United States, ____A.2d_____ (1972).

APPENDICES

APPENDIX A

Guide to Procedure
Superior Court, Criminal Division

PUBLIC DEFENDER SERVICE
FOR THE DISTRICT OF COLUMBIA

GUIDE TO PROCEDURE - SUPERIOR COURT
(February, 1972)

The following notes, prepared by William F. Dow, Esq. of the Public Defender Service, are being furnished to assist appointed counsel in representing misdemeanor and felony defendants before the Criminal Division of the Superior Court of the District of Columbia. Since there are resources available in the area of substantive criminal law, the emphasis herein is on the practical aspects of such representation, and on details of local practice which may be unfamiliar to attorneys not regularly engaged in the Superior Court. Citations to Rules, unless otherwise noted, refer to the Criminal Rules of the Superior Court, modeled on the Federal Rules of Criminal Procedure but modified in some significant respects.

There is included, at the end, a note concerning services and assistance available through the Public Defender Service. Since this Guide will be periodically revised, we welcome your comments, criticisms, and suggestions for improvement. Please forward them to the Criminal Justice Act Program, Public Defender Service, 601 Indiana Avenue, N.W., Washington, D.C. 20004.

ARRAIGNMENT/PRESENTMENT

After an individual has been arrested by the police, he is first detained at one of the local district or sub-stations or transferred to the Central Cellblock in the Municipal Building at 300 Indiana Avenue, N. W. On the morning of his first appearance in Court (in most cases the morning immediately following the arrest), he is transported to the Superior Court Cellblock in the basement of Building A. There he is interviewed by the Criminal Justic Act Office to determine his financial status and thereby his eligibility for representation by an attorney to be appointed under the Criminal Justice Act. He is also interviewed by the Bail Agency to obtain information on the basis of which it will make a recommendation as to conditions of pretrial release. Quite possibly, he will also be interviewed by representatives of Bonabond, Inc. or Blackman's Development Center, to ascertain his eligibility for participation in their programs if the Court requires a third-party custodian. If an individual is on parole or probation, the supervising officer sometimes interviews him in the cellblock as well. Additionally, he is asked to surrender urine for an analysis of possible drug usage by the Court's drug testing facilities.

A. Appointment of Counsel

After receiving notification of assignment, attorneys should report on that day to the Criminal Justice Act Office located on the third floor of Building A in Room 306 where they will learn the name of the defendant they have been appointed to represent.

The assignment of attorneys to indigent defendants results from the following process. All individuals detained in the lockup are assigned a "lockup list." In addition to the defendant's name and lockup number, this sheet contains an indication of the charge for which he was arrested. However, the listed charge is merely the original charge placed by the arresting officer and may change by the time the case has been reviewed by an Assistant United States Attorney and any information formally filed.

Subsequent to interviewing the day's lockups, representatives of the Criminal Justice Office will present a list of the eligible lockups together with a list of avialable attorneys to the judge presiding in the Arraignment Court, (Courtroom 17) for an appointment under the Criminal Justice Act. Although timing will vary with individual judges, attorney's names will generally be placed next to their assigned cases on the lockup list by 11:30 a.m., and a list of the assignments is then made available in Room 306. There the attorney should note the name of his client, his lockup number, and the charge for which he was arrested. In many cases, the information or felony complaint together with search and arrest warrants and affidavits in support thereof will be available in the Criminal Justice Act Office at this time.

After reviewing the formal charges, counsel should proceed to the Bail -Agency office on the 3rd floor, and inquire as to whether or not his client's bail report has been completed. The Bial Agency keeps its daily files in numberical order according to lockup number. Counsel is entitled to a copy of the compelted bial report but it is not unusual for a bial report to be incomplete at the time of initial inquiry. If the report is not available, the attorney should proceed with his client interview and include questions relative to release on bail.

It is most important, however, that the attorney ascertain the Agency's recommendations prior to the case being called in court, for the Agency's recommendations are followed by the court in the majority of cases. Having access to the report and the Agency's recommendations prior to entering court will permit the attorney to know whether or not it will be necessary to obtain the presence of relatives or other third-party custodians. Additionally, the Bail Agency is frequently unable to confirm certain information about a defendant, and the attorney himself may be able to do so by telephone calls subsequent to his interview.

B. Interview

The Superior Court Cellblock is located in the basement of Building A. It may be reached by the elevator at the north end of that building. Upon arriving in the cellblock, the attorney should sign in on the book to the left of the elevator, and then proceed to interview his client in the lockup section. On some rare occasions defendants will have been brought to the lockup behind Courtroom 17 (3rd floor, Buidling A), and interviews must be conducted there.

The purpose of the initial interview is primarily to obtain information relevant to bail. Because of the lack of privacy, it is difficult to discuss fully the facts surrounding the charges pending against the client. At the initiation of the interview, the attorney should explain that he has been appointed to represent the defendant and briefly describe the attorney-client privilege. The attorney should also explain that sometime subsequent to the interview the defendant will be taken to Courtroom 17 where he will either be arraigned (if the charge is a misdemeanor) or presented (if the charge is a felony) and bond will be set.

It is desirable to obtain the following information from the defendant at the time of the interview:

Full name
Date of birth
Address, how long at present address
Telephone number
Prior addresses
Ties in the District of Columbia(relatives, friends, employers)
Length of residency in the District of Columbia
Employment status
Prior employment
Health problems
Bond, parole or probation status
Drug usage, if any
Prior convictions and prior bond status

It is also desirable to inquire as to what the defendant knows about the charge against him, where and how he was arrested, whether or not he gave statements to the police, and whether or not these statements were signed. Furthermore, if there is an indication that the Bail Agency may recommend third-party custody, the attorney should ascertain whether there are any relatives or friends of the defendant who are in Court or who would be willing to take custody of him, or whether there is anyone whom the attorney could call to come to Court to accept custody. It is

also wise in such cases to determine whether or not the defendant has been interviewed either by Bonabond or Blackman's Development Center, and if so, whether he wishes to participate in their programs.

Bonabond, Inc. (412 Fifth Street, N.W., telephone: 737-4307), is a non-profit corporation primarily devoted to drug counseling and is willing to act as a third-party custodian in many cases. For the most part, Bonabond does not have 24 hour live-in facilities, but merely promises its best efforts to the Court to work with defendants released into their custody and to assure their appearance in Court. Blackman's Development Center (6404 Georgia Avenue, N.W., telephone: 291-5900) is also a drug program emphasizing methadone maintenance. Its facilities are primarily live-in, and like Bonabond, it will accept third-party custody in some cases.

C. Arraignment and Presentment

Arraignments for misdemeanor defendants and presentments for felony defendants are held in Courtroom 17 on the third floor of Building A. Court proceedings customarily begin after the noon recess and prior to this time the defendants are placed in the cellblock behind the Courtroom. It is possible to meet with defendants there to discuss further bail situations or any other matters which have come to light since the interview. Defendants will be called out in groups of 12 and seated in chairs to the judge's right. Cases are not called in order by lockup numbers, but rather in the order in which the Court Jackets have been received by the Marshals from the Criminal Justice Office. Since the Marshals will not call a case if the assigned attorney is not present, the attorney should directly notify the Marshal that he is ready to proceed.

1. Misdemeanors. The first appearance of a person accused of a misdemeanor is at arraignment. The defendant's case will be called by the Marshal, and the defendant and his attorney stand before the Judge. The Clerk will inform the defendant of the charges against him, his right to counsel if indigent (in cases where counsel has not been appointed as of this time, the Court may appoint counsel from those lawyers in attendance in the courtroom), his right to a trial by jury or by the Court, his right to remain silent, and the confidential nature of his communciations with his attorney. The Clerk will then ask him to plead guilty or not guilty. In almost all cases, a plea of not guilty should be entered and a jury trial demanded, and this can be done by the attorney speaking for the defendant. Since jury trials are usually scheduled from three to four weeks subsequent to arraignment, it is sometimes wise to ask that the scheduling of a trial date be postponed until the matter of bond is first determined, for if a high bond is set, it may be possible to obtain an early trial date.

2. Felonies. The first appearance for a felony defendant is called presentment (Rule 5). Its purpose is to inform the defendant of the charges against him, his rights to counsel, to remain silent, to a preliminary hearing, and the privileged nature of his communication with his attorney. Conditions of release will be imposed at this time. If a defendant is unable to obtain release, he is entitled to have his preliminary hearing set within ten days, and if he is released, that hearing must be held within 20 days, unless such time period is waived (Rule 5). It is wise to postpone the scheduling of a hearing until the matter of bond is first determined.

At the time of presentment or arraignment, the attorney should ascertain from the courtroom clerk the number of the case and from the Assistant United States Attorney, the "CCR Number," a six-digit number assigned to each case by the Metropolitan Police Department.

D. Bail

It is obviously of crucial importance to obtain defendant's release prior to trial. Release and pretrial detention in Superior Court are governed by § 23 D.C. Code 1321, et seq. (1970). It is very important that attorneys read and familiarize themselves with these sections prior to appointment.

Section 23-1321(a) states:

> *Any person charged with an offense, other than an offense punishable by death, shall, at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in the amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required or the safety of any other person or the community. When such a determination is made, the judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or the safety of any other person or the community, or, if no single condition gives that assurance, any combination of the following conditions:*
>
> 1. *Place the person in the custody of a designated person or organization agreeing to supervise him.*

2. *Place restrictions on travel, association, or place of abode of the person during the period of release.*

3. *Require the execution of an appearance bond in a specified amount and the deposit in the registry of Court, in cash or other security as directed, of a sum not to exceed ten percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release.*

4. *Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof.*

N.B.: No financial condition may be imposed to assure the safety of any other person or the community.

Section 23-1321(b) states:

> *In determining which conditions of release, if any, will reasonably assure the appearance of a person as required or the safety or any other person or the community, the judicial officer shall, on the basis of available information, take into account such matters as the nature and circumstances of the offense charged, the weight of the evidence against such person, his family ties, employment, financial resources, character and mental conditions, past, length of residence in the community, record of convictions, and any record of appearance at Court proceedings, flight to avoid prosecution, or failure to appear at Court proceedings.*

The Bail Agency report will reflect these considerations and serve as the basis for the Agency's recommendation. Information as to the weight of the evidence against the defendant is supplied to the Court on request by the Assistant United States Attorney in Courtroom 17, who either shows the judge the information contained in the official reports or verbally proffers that information. As noted above, the recommendation of the Bail Agency is frequently the key factor to securing a defendant's pretrial release. Nevertheless, even where the Bail Agency makes no recommendation, counsel should argue strenuously for some appropriate type of pretrial release.

In some cases, the Government may seek "preventive detention" of a defendant, which results in an order holding him without bond. Briefly, the Court is authorized to hold the defendant without bond for a period of five days if it is shown that he was on probation, parole, or some other type of release at the time of his most recent arrest. If at the

end of the five days, no violator's warrent has been issued, the defendant must be considered for pretrial release in accordance with 23-1321. A special section of the Act (23-1323) authorizes pretrial detention of drug addicts. Section 23-1323 provides for the pretrial detention of defendants in appropriate non-capital cases.

BOND REVIEW

Section 23-1321(d) provides that any person for whom conditions of release have been imposed and who is unable to obtain his release within 24 hours thereafter is entitled to have those conditions reviewed by the judicial officer who imposed them. If the conditions are not amended and the person released, the Judge must set forth in writing the reasons for the impositon of those conditions.

Bond review motions are filed with the Criminal Clerk in Room 116-B of Building A. Like all motions, they must be accompanied by a Motions Card which is avialable in the Clerk's Office, on which counsel will designate the judge who imposed bond, the case number, counsel's name and similar information. Most judges in Superior Court do not hold formal hearings on bond review motions but rather decide the case on the papers presented by counsel. Because of this, it is very important that the motion be as thorough and complete as possible, hopefully providing the judge with information which was not previously available to him in the Bail Agency report. Most typically, counsel will be able to provide information as to the availability of a third-party custodian or to confirm information given by his client and which the Bail Agency was unable to verify.

The statute provides that bond review motions shall be considered by the judge who originally set bond. Thus, once a motion is filed, it is taken by the Clerk from the Clerk's Office to the judge's chambers. (It is advisable that counsel leave a copy of the motion at chambers.) Since the statute does not require that a ruling be made within any specified period of time, it is advisable to telephone the judge's chambers two or three days after filing to ascertain what action, if any, has been taken, or whether further information can be provided by counsel which would be of assistance. When the judge who originally imposed conditions is not available, the Clerk's Office will accept the motion and refer it to the Assignment Commissioner who will then direct it to an available judge.

APPEALS FROM CONDITIONS OF RELEASE (§ 23-1324)

Both the Government and the defendant can appeal from the imposition of conditions of release once they have been reviewed by the judge who imposed them. These appeals will be handled in an expedited manner by the District of Columbia Court of Appeals. Section 23-1324(b) provides that the order appealed from "shall be affirmed if it is supported by the proceedings below. If the Order is not so supported, the Court may remand the case for a further hearing, or may, without additional evidence, order the person released pursuant to § 23-1321(a)."

Rule 9 of the District of Columbia Court of Appeals provides for these appeals to be conducted in an expedited fashion. The appeal may be conducted without the necessity of a record or briefs; however, the appellee must receive reasonable notice of any material presented by the appellant. The document appealed from, of course, will be the conditions of release imposed by the trial judge and his written reasons for requiring the impsoiton of these conditions.

The full procedure for initiating an appeal from the conditions of release is outlined in Rule 4-III of the District of Columbia Court of Appeals Rules. It will be necessary, of course, to file a notice of appeal with the Superior Court Criminal Clerk's Office (first floor, Building A). Furthermore, in most cases a motion to proceed on appeal in forma pauperis together with an affidavit in support of that motion (form 5 of the Appendix of forms).

FELONIES - PRELIMINARY HEARING

Subsequent to presentment the felony defendant will be required to return to Courtroom 12 in Building A at a later date for a preliminary hearing on his case. The purpose of the hearing is to determine whether or not the Government is in possession of sufficient evidence to show that there is probable cause to believe that a crime as been committed and probable cause to believe that the particular defendant committed it. Once the proper showing has been made, the case will be "bound over" to the Grand Jury. In almost all cases the Government is able to present sufficient evidence to have the case bound over.

Rule 5(c)(2) requires that a preliminary hearing shall be held no later than ten days following the initial appearnace of the defendant if he is confined in custody, and not later than twenty days if he is released. A continuance beyond these time limits may be granted by the court for good cause shown, but only with the consent of the defendant. (When a defendant is released, it is often in his best interest to accede to the Government's request for a continuance.)

Rule 5(c)(1) specifically states that "the purpose of a preliminary examination is not for discovery;" nevertheless, from the defense standpoint, the hearing does afford an opportunity to obtain a substantial amount of information about the Government's case. Even more important, the hearing also allows the defense to obtain sworn testimony which can later be used as a basis for impeachment at trial. Because of this aspect it is in most cases unwise from a tactical point of view to present testimony of either the defendant or any defense witnesses.

The defense is entitled, however, to subpoena witnesses and present testimony that will negate probable cause. Ross v. Sirica, 127 U.S. App. D.C. 10, 380 F. 2d 557 (1967); Washington v. Clemmer, 119 U.S. app. D.C. 216, 339 F 2d 715 (1964). The Government often asks the Court to require that the defense present witnesses only after first proffering to the Court that their testimony will, in fact, tend to negate probable cause; however, a strong argument can be made that the testimony of crucial witnesses should be allowed and that the Court should not be forced to rely solely on the hearsay testimony of the officers involved in the case.

The Government's usual procedure in conducting a preliminary hearing is to present the testimony of an officer who will take the stand and relate the information he has obtained through his investigation and through conversations with others, including the complaining witness. Except in cases such as Assault on a Police Officer, the value of his testimony as a basis for later impeachment is quite limited and therefore the defense should make every effort to obtain the testimony of any Government witness -- especially eye witnesses -- to the incident. One caveat is that when an eye witness is called upon to testify and a question of identification is present in the case, defense counsel should first approach the bench and waive the presence of the defendant at the hearing so as not to solidify the identification of the defendant by the witness or jeopardize anticipated attack upon any subsequent lineup identification. As noted, in almost all cases the presiding judge usually finds that the Government has made a sufficient showing to allow the case to be sent to the Grand Jury.

It is also important to take advantage of the possibilities of plea negotiation at the time of the preliminary hearing. Prior to the day of the hearing, the defense attorney should attempt to contact the particular Assistant United States Attorney who is assigned to conduct preliminary hearings on the following day and attempt to discuss the case with him, and in particular, the possibility of a disposition. If this is not possible, the defense attorney should also try to discuss the case briefly with the assistant prior to the call of the preliminary hearing calendar. Some cases can be "broken down" to a misdemeanor for the purpose of a plea or trial, with the waiver of a preliminary hearing in exchange for the

entry of a "nolle prosequi" by the Government in respect to the felony charge.

This "break down" can be accomplished in several ways, but most usually the preliminary hearing assistant will send the case back to his office with the arresting officers for the purpose of papering it as a misdemeanor. When the paper is returned to the preliminary hearing court, the defendant will be arraigned on the misdemeanor charge and allowed to enter a plea of guilty at that time or ask for a jury trial with the understanding that a plea will be entered on the trial date. The Government will then enter a nolle as to the felony.

It goes without saying that the defendant is bound by the agreement and should he later decide to refuse to enter a plea to the misdemeanor, the Government can dismiss that case an reinitiate felony proceedings.

When a case is broken down from a felony to a misdemeanor, one of the important subjects of discussion with the Assistant United States Attorney is his position on pretrial release on the misdemeanor charge. This can usually be agreed upon by counsel at the time of these negotiations.

FELONIES - GRAND JURY PROCEEDINGS

The Grand Jury section of the United States Attorney's Office for the Superior Court is located in the basement of Building B. Additional offices and Grand Jury rooms are also in the basement of Building B. If probable cause is found and the case bound over, the United States Attorney's Office arranges a date for its "presentment" to the Grand Jury. At this time, the Government will call some or all of its witnesses to testify before the Grand Jury about the charge upon which the defendant was arrested and bound over.

The Grand Jury consists of 23 individuals who sit monthly. A simple majority of 12 of the members of the Grand Jury is sufficient to return an indictment formally charging a defendant with a crime. Its proceedings are secret and, for the most part, unabailable to the defense. (However, the defense is entitled to a transcript of the Grand Jury testimony of witnesses who also testify at trial. See the Jencks Act, 18 U.S.C. 3500(e).) Cases are presented to the Grand Jury by Assistnat United States Attorneys who call witnesses and question them in the Grand Jury's presence. The individual members of the jury may also direct questions to a testifying witnesss. Indictments are usually handed down within two to four weeks after the presentment of the case to the Grand Jury. The formal handing down of the indictment requires the Grand Jury to present to the Chief Judge of the Superior Court a list of indictments, each of which is signed by the Foreman of the Grand Jury. An

indictment in any individual case may contain charges in addtion to the ones upon which the defendant was arrested or presented; for example, a case in which a man is alleged to have assaulted another with a gun may result in an arrest on the charge of Assault with a Dangerous Weapon and subsequently in a two-count indictment charging Assault with a Dangerous Weapon and Carrying a Dangerous Weapon.

It is possible for the defense to place testimony before the Grand Jury, but this tactic must be used with extreme caution. The Grand Jury proceeding, as noted, is closed to defense counsel and therefore counsel has no control over what goes on in thos proceedings. Furthermore, Grand Juries rarely refuse to return indictments, and any testimony given at a Grand Jury proceeding on behalf of the defendant will be available as a possible basis for impeachment of defense witnesses by the Government at trial.

Rule 48(c) requires the Grand Jury to take action on a case within nine months of presentment and its failure to act within that period will constitute grounds for a dismissal, but the court having jurisdiction to try the offense may extend this time for good cause shown in a written motion filed by the Government.

FELONIES - GRAND JURY ORIGINALS

Although most cases reach the Grand Jury through the normal process of arrest, presentment, and preliminary hearings, some cases are presented to the Grand Jury without any formal proceedings having first been initiated against the defendant. Also, a case which has been dismissed at the time of the preliminary hearing for want of probable cause may be subsequently presented to the Grand Jury by the Government. Indictments handed down in this fashion are known as Grand Jury Originals. Usually, subsequent to the handing down of an indictment, the defendant is notified by mail and required to appear in court for arraignment. Failure to appear will result in the issuance of a bench warrent for the defendant's arrest.

FELONY ARRAIGNMENTS

Indicted cases are assigned to a particular judge and placed on his individual calendar. Subsequent to indictment, both the attorney and the defendant will receive notice of indictment and a date for arraignment before a particular judge. Felony arraignments are identical to those in misdemeanor cases in that the defendant will enter a plea of not guilty and a trial date will be set by the court. Trials are usually scheduled for a period of four to six weeks after arraignment. The felony judge also makes a determination as to bond in accordance with § 23-1321. Unless the Government takes a contrary position, the felony judge will usually

allow bond or conditions previously set to remain. However, if a defendant has been detained, the defense attorney should make every effort to obtain his client's release at this time in accordance with the procedures outlined supra in the discussion on Bail. The felony judge will also set a date for a status hearing. That date will be approximately one or two weeks before trial and its purpose is to allow counsel for Government and the defense to inform the court of the status of the case and the likelihood of dispositon. Additionally, most judges use the status date as an opportunity to hold hearings on motions filed by either side.

MISDEMEANOR MOTIONS

Superior Court Rule 47(c) requires that all motions except those for review of conditions of release, continuances, and dismissal for lack of speedy trial be filed within ten days of arraignment or entry of appearances of counsel, whichever is later. While it is possible for motions to be filed beyond this time limit with the permission of the motions judge, it is important to obtain information about your case, both from the defendant and from the Government, as soon as possible.

If the defendant is released at the time of arraignment, the attorney should attempt to set a definite date for an appointment with his client to discuss fully all aspects of the case in private. If the defendant is detained, he may be interviewed at the District of Columbia Jail at 200-19th Street, S.E. between the hours of 8:00 a.m. and 8:00 p.m. on weekdays, and 8:00 a.m. and 3:00 p.m. on Saturdays. Female defendants are detained at the Women's Detention Center, 1010 North Capitol Street.

The Criminal Rules of the Superior Court encourage informal pretrial discovery by requiring defense counsel to certify in writing on all discovery motions that he has made a bona fide attempt to secure the necessary information from the prosecutor on a voluntary basis and that this request has not been complied with. (Rule 16-II) Accordingly, defense counsel should attempt to meet with an Assistant United States Attorney, Misdemeanor Trial Section (lst floor, Building B) to discuss the case. The United States Attorney's Office does not assign misdemeanor cases to individual assistants, but rather staffs each misdemeanor courtroom with an attorney who tries cases as they come forward on the day of the trial. This means that the defense counsel may discuss his case with any of the attorneys assigned to the Misdemeanor Trial Section. These assistant are, usually, free to discuss cases after 4:00 p.m.

The United States Attorney will have in his file a police report, known as the PD-163 (statement of facts), whcih contains a narrative of the incident in the words of the arresting officer. Also in the jacket will be the notes of the Papering Assistant taken from his conversation with

the arresting officer. In almost all cases, witnesses will not have been interviewed and the extent of the Government's knowledge about any particular case will be contained in the papers in its files.

Defense counsel should informally attempt to obtain all the information to which he is entitled under Rule 16; for example, any statements, confessions, or admission made by his client; all tangible or physical evidence or documents obtained during the investigation of the case; all photographs of possible suspects shown by the police to any witnesses in connection with the case; information about any other identification procedures employed by the Government; the existence or absence of fingerprints; any other scientific tests made in connection with the case; the record of prior criminal convictions of potential prosecution witnesses; and any materials which tend to negate the guilt of the accused as to the offense charged. Brady v. Maryland, 737 U.S. 83 (1963). If all requested information is not provided, counsel should move promptly to file a motion for discovery.

Subsection (d) of Rule 47 requires that no motion shall be set for a hearing less than five calendar days before the trial date. The Motions Judge can and often does allow for exceptions to these rules; however, when attempting to obtain permission from the judge for late filing, it is best to first notify the Government to ascertain whether or not they have any opposition to late filing.

Motions are heard in Courtroom 15 (Building A) after the luncheon recess. The hearing date is set by the Criminal Clerk's Office at the time of the filing of the motion. If a defendant is incarcerated he will automatically be brought up to the court for his presence at the hearing on the motion. The appearance of a defendant who is released to the community is the responsibility of the defense attorney. While it is possible to waive the defendant's presence at the hearing this should only be done in unusual circumstances or where there is a tactical advantage (as in identification suppression motions). In most cases the judge will rule on the motion from the bench at the conclusion of the hearing.

While the usual procedure is to hold a motion in advance of trial, it is sometimes possible to arrange to have motions heard of the day of trial, especially when they might be dispositive of the case. This arrangement requires the consent of the Government and the permission of the Motions Judge.

FELONY MOTIONS

Unlike misdemeanor cases, felonies are assigned upon indictment to a particular Assistant United States Attorney who will remain with the case from arraignment through trial. The offices of the Felony Section of the United States Attorney's Office are located on the third floor of the west end of Building D at 451 Indiana Avenue, N.W. Since all motions must be filed within ten days of arraignment and discovery motions cannot be filed without the proper certificate of attempts to obtain informal discovery, defense counsel should make every effort to contact the individual felony assistant assigned to his case and to discuss the matter with him. The timing on motions is identical to that of misdemeanor cases and is governed by Rule 47 of the Superior Court Rules. Although the Court Jacket in felony cases is kept by the individual judge, an original of the motion should be filed with the Criminal Clerk's Office. A copy of that motion may be mailed to the Assistant United States Attorney assigned to the case or it may be delivered to his office. It is desirable for defense counsel to obtain a time-stamped copy of the motion for his own files from the Clerk's Office.

As noted, the usual date for hearing motions in felony cases is set for the time of the status hearing. However, this is not an iron-clad rule and counsel should ascertain the practice of each particular judge. It is to the advantage of the defense to have a hearing set at least several days prior to trial so that a transcript of those proceedings can be obtained for possible use at trial for impeachment.

SUBPOENAS

Subpoenas are governed by Rule 17. They may be issued by the Clerk of the Court to a requesting party. Upon showing that the defendant is financially unable to pay witness fees the court can order the issuance and service of a subpoena *in forma pauperis*. Upon order of the court, a subpoena directed to a felony witness may be served anywhere in the United States. The jurisdictional limit is, however, generally confined to the District of Columbia or 25 miles from the place of the hearing or trial. Witnesses are entitled to a witness fee of $20 per diem and an additional travel allowance. To obtain payment, counsel should fill out a "Voucher for Witness Fee: form, available from the Criminal Clerk's Office. The form is presented to the Financial Clerk's Office for payment.

MENTAL EXAMINATIONS

Section 24-301 *et. seq.* of the District of Columbia Code deal with the treatment of individuals found incompetent to stand trial or not guilty by reason of insanity.

At the time of arraignment in misdemeanor cases, if it appears that the defendant may be mentally disturbed, defense counsel may consider requesting the court to order him sent to Saint Elizabeth's Hospital for a 60 or 90 day period of observation to determine whether or not the defendant is competent to stand trial. If the defense motion is granted, the court will set a date for the return on this mental observation, at which time Saint Elizabeth's Hospital will come forward with a report of their findings. If Saint Elizabeth's Hospital should find that a misdemeanor defendent is incompetent to stand trial and recommends that he be civilly committed to the custody of the Hospital, the Government in most misdemeanor cases will agree to drop criminal charges upon completion of the civil commitment procedures. Counsel's decision to ask for a competency hearing in cases of a misdemeanor defendant should not be taken lightly for if civilly committed, an individual can be detained at Saint Elizabeth's Hospital for a period far in excess of the possible criminal sentence for the offense originally charged. Mental observations, in the case of felony defendents, are more difficult in both a substantive and procedural sense. Procedurally, defense counsel can request that the defendant be committed at Saint Elizabeth's for a mental observation at the time of presentment, arraignment, a motion should be filed before the misdemeanor motions judge. Defense counsel should ask that a determination be made by the Hospital as to whether or not defendant is competent to stand trial, and if the allegations are correct, as to whether defendant's actions were a product of his mental disease or defect.

The basic problem that confronts defense counsel in dealing with mental observation for a felony defendant is the lack of facilities and personnel at Saint Elizabeth's Hospital to complete the necessary studies. Hence, defendants are often held at the D.C. Jail for extensive periods while awaiting transfer for observation at Saint Elizabeth's Hospital. Again, as in the case of misdemeanor defendants, the decision to ask for a mental observation should not be taken lightly. When considering the possibility of raising a defendant's sanity, counsel should take into account not only the legal aspects of such a course, but also the practical results of any such actions.

NOTICE OF ALIBI

Under Rule 16-1 the Government may, in felony cases, demand in writing the names and addresses of the witnesses upon whom the defendant tends to rely to establish an alibi and the place or places at which he claims to have been at the alleged offense. The defense must surrender that information within ten days after receipt of that demand and less than ten days before trial. Within ten days after that response the Government is obliged to serve upon the defendant a written notice stating the names and addresses of the Government's witnesses. Subsection (c) of

this rule states that "(u)pon the fialure of either party to comply with the respective requirements of this rule, the court shall, except for good cause shown, exclude the testimony of any witness offered by such party as to the defendant's absence from, presence at, the scene of the alleged offense. This rule shall not limit the right of the defendant to testify in his own behalf."

CONTINUANCES

In misdemeanor cases a continuance must be requested at least two days before the scheduled date of trial. (Rule 111(c)) Customary procedure is for defense counsel to obtain the consent of an assistant in the misdemeanor trial section of the United States Attorney's Office. Counsel may then obtain an "Application for Continuance" form to be signed by himself and the representative of the U.S. Attorney's Office. That application can then be taken to the Calendar Control Court for approval by the presiding judge. An exception to the "Two-day Rule" allows continuances in extraordinary or unforeseen circumstances.

If the prosecutor's consent cannot be obtained, a written motion must be filed.

In felony cases, requests for continuances are heard by the judge to whom the case is assigned.

TRANSCRIPTS

Transcripts may be obtained by defense counsel with the approval of the trial judge. Counsel should obtain CJA Form 21 which authorizes preparation of and payment for a transcript and present it to the felony trial judge, or, in misdemeanors, the judge who presided at the matter which is to be transcribed. Once the judge's approval has been obtained, counsel should present the order to the Court Reporter's Office in Room 516 of the Potomac Building (Building F), 613 G Street, N.W.

DEPOSITIONS

Rule 15 of the Superior Court Criminal Rules allows a deposition to be taken of a material witness for either the prosecution or the defense, providing he resides more than 25 miles from the District of Columbia at the time, is sick or inform, or is about to leave the District of Columbia. The moving party must make a request in writing for a "commission" to examine the witness which shall be issued by the Clerk's Office. If it appears the defendant cannot bear the expense of the deposition, the court may order payment by the Government.

Rule 15(e) provides that a part or all of a deposition so far as it is admissible under the rules of evidence may be used if it can thereafter be demonstrated "that the witness is dead; or that the witness in a felony case is outside of the United States, or in a misdemeanor case is outside 25 miles from the place of holding court, unless it appears that the absence of the witness was procured by the party offering the deposition has been unable to procure the attendance of the witness by subpoena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness."

MISDEMEANORS - PLEA BARGAINING

The best possible disposition, of course, is for the Government to dismiss the case against the defendant. This is usually done by the entry of a nolle prosequi in open court by the Government at the time the case is called. The Government may agree to enter a nolle for many reasons, whether legal or practical, and it is sometimes necessary to present the prosecutor with a plan for the defendant which will involve either a rehabilitative scheme or restitution, if applicable.

For first offenders -- principally those accused of petit larceny or shoplifting -- the Government has available a program known as "First Offender Treatment." This program requires the defendant to observe courtroom proceedings for a day, participate in a guided tour of the Federal Bureau of Investigation, write a short theme on what he has learned from his observations, both in court and at the GBI, and sign an official release waiving all possible civil action against the complainant (usually a department store). Upon completion of these requirements, the Government will enter a "nolle" on the date of trial. Customarily, the Assistant U.S. Attorney who papers the case when it first comes into the court system will make a notation on the jacket that First Offender Treatment will be acceptable to the Government in the particular case.

A second program geared principally to first offenders in non-drug, non-weapon cases (although some second offenders are admitted in exceptional circumstances) is Project Crossroads at 527 Sixth Street, N.W. This program is now part of the Superior Court system. It accepts no cases involving weapons or narcotics. Under the Crossroads system, the case will be continuted for 90 days on the condition that the defendant agree to waive any objection as to speedy trial. Crossroads provides counseling, education and employment services for defendants, and upon successful completion of the program the Government, as in the First Offender Program, will enter a nolle prosequi.

The United States Attorney's Office maintains a section designated as the Major Violator Section, which directs special attention to certain cases involving individuals with prior convictions. The cases are chosen for

special attention by computer and are subject to more investigation and preparation than an ordinary misdemeanor case. A major consideration in dealing with defendants whose cases have come to the attention of the Major Violator Section is the authority of th Government to file second and third offender papers. Section 22-104 provides that a person who is convicted of a criminal offense under a law applicable exclusively to the District of Columbia and who was previously convicted of the same offense or one lesser included therein, may be sentenced to pay a fine of not more than one and one-half times the maximum fine for his conviction and sentenced to imprisonment for a term not more than one and one-half times the maximum term of imprisonment for that conviction. If the defendant has previously been convicted more than once for that offense, he may be sentenced to pay a fine not more than three times the maximum and sentenced to imprisonment for a term of not more than three times the maximum set for that offense.

Additional punishment may also be imposed if a defendant falls within § 23-1328 pertaining to the commission of offenses while on bond. This provision, as noted supra, allows the court to impose a consecutive sentence of not less than 90 days nor more than one year. Further, Section 23-103 gives the prosecution the right to allocute in response to allocutions made on behalf of the defendant by his counsel.

Finally, § 23-1325(b) provides that a person who is convicted on an offense and is awaiting sentence shall be detained unless he can show by clear and convincing evidence that he is not likely to flee or pose a danger to any other person or to the property of others. These various statutory provisions provide the Government with ample ammunition to induce a plea where the evidence in the case might otherwise justify taking the case to trial. If the Government is receptive to plea bargaining, it will often agree not to file second or third offender papers, or not to allocute, or not to file papers regarding an offense committed while the defendant was on bond, or not to ask for the defendant's detention prior to sentencing should a plea be entered in a particular case. This is obviously a very difficult negotiation, and the consequences must be discussed thoroughly with the defendant.

FELONIES - PLEA BARGAINING

Plea bargaining in felony cases should be initiated by the defense attorney prior to the return of an indictment. Once an indictment has been handed down and the defendant formally charged with a felony it is exceedingly difficult, in attempting to dispose of the case, to obtain from the U.S. Attorney's Office an agreement to reduce the charge to a lesser misdemeanor. Thus, within a few days after preliminary hearing, the defense attorney should attempt to discuss the matter with an Assistant United States Attorney assigned to the Grand Jury Section of the Superior Court.

While it is often difficult to properly assess the Government's case within such a short time after the defendants's first appearance in court, it is vital for the defense attorney to initiate his investigation as soon after appointment as possible to be able to intelligently negotiate an appropriate disposition, if warranted by the evidence. Just as in misdemeanors, an offer made by an individual Assistant U.S. Attorney is not necessarily the Government's final offer, and it is often advisable to consult with the Chief of the Grand Jury Section before treating the offer as a final one.

ENTRY OF GUILTY PLEAS

If the determination is made before trial that the defendant is to plead guilty, the defendant will, in the case of a misdemeanor, enter that plea before the jduge to whom his case is assigned by the Assignment Commissioner or in the case of felonies, before the felony judge to whom his case has been assigned. The judge accepting the guilty plea will also be the judge who imposes sentence. Pleas are governed by Rule 11 of the Superior Court Criminal Rules. That rule provides that the court will not accept a plea of guilty or a plea of nolo contendere "without first addressing the defendant personally and determining that the plea is made voluntarily with the understanding of the nature of the charge and the consequences of the plea." The conditions for a valid entry of a plea of guilty are set forth in Everett v. United States, 119 U.S. App. D.C. 60, 61 n. 3, 336 F. 2d 979, 980 n. 3 (1960), and see McCarthy v. United States, 394 U.S. 495 (1969); Boykin v. Alabama, 395 U.S. 238 (1969); North Carolina v. Alford, 400 U.S. 25 (1970). Counsel should interview his client and satisfy himself and his client that these requirements are met, and further should satisfy himself that his client is guilty in fact and in law and that the plea is in the defendant's best interest. Where, however, the Government's evidence is strong and the defendant with the advice of counsel feels it is in his best interest and wishes to plead guilty, he may do so without admitting actual guilt. See Griffin v. United States, 132 U.S. App. D.C. 108, 405 F. 2d 1378 (1968); McCoy v. United States, 124 U.S. App. D.C. 177, 363 F. 2d 306 (1966). Although some doubt has been cast on this procedure, McCarthy, supra, current case law, Alford, supra, endorses such a plea in appropriate circumstances. In any event counsel should discuss such a plea with the Assistant U.S. Attorney and the designated calendar judge before its entry.

In evaluating a plea, counsel should pay particular attention to his client's age. Defendants under the age of 22 at the time of sentence are eligible for sentencing under the Federal Youth Corrections Act, 18 U.S.C. 5005, et seq. The primary benefits of the Act for felony defendants are its emphasis on treatment and rehabilitation and the fact

that a conviction may be expunged. However, if the defendant enters a plea to a misdemeanor or an offense which carries a maximum of less than that permissible under the Act, he should be advised the judge has the power to impose a higher sentence. See Harvin v. United States, ___ U.S. App. D.C. ___, 445 F. 2d 675 (1971). Counsel should also be familiar with United States v. Waters, 141 U.S. App. D.C. 289, 437 F. 2d 722 (1970) and United States v. Ward, ___ U.S. App. D.C. ___, ___ F. 2d ___ (No. 71-1654 and 71-1677, decided October 29, 1971).

TRIALS

A. Misdemeanors

Defendants in misdemeanor cases are told at the time of arraignment to return to Courtroom 15 on the third floor of Building A at 9:00 a.m. on the date of trial. Courtroom 15 is designated as the Calendar Control Courtroom. In Courtroom 15 all misdemeanors and traffic cases are called in order by the Clerk; the presiding judge ascertains the readiness of both sides. When both sides are ready, the case is then certified to the Assignment Commissioner and the court jacket is sent to his office, next door to Courtroom 17. From that office, cases are assigned for trial or disposition as judges become available. Immediately after the call of hsi case, defense counsel should proceed to the Assignment Commissioner's Office and advise the Assignment Commissioner of his readiness for trial. He will then be informed of the availability of judges to hear the case and most likely be advised to wait in the Lawyers' Lounge.

Each day's misdemeanor and traffic cases are listed on a computer print-out and a copy of this list is posted on the wall outside the witness room (Room 310) on the third floor. Upon arrival at the court, defense counsel should ascertain from the Government its readiness and confirm any previous arrangements as to disposition. It is difficult but occasionally possible to discuss a disposition at this time.

All Government witnesses in misdemeanor cases are told to report to the witness room where they are to check in with the clerk who will be able to advise counsel or the Government's readiness in any particular case. Defense witnesses may be told to report to that room as well, or, as counsel prefers to Courtroom 15 or any other locale.

If there is a large number of cases scheduled for trial in any one day, it is not unusual for the Government to be unprepared to go forward on a number of cases at the time they are first called. Usual procedure is for the Government to request that the case be passed for second call to

ascertain the location of witnesses or to clarify the status of a particular case. It is likewise not unusual for a case that has been certified to the Assignment Commissioner to be continued later in the day because of the unavailability of trial judges.

Preference is given to cases involving defendants who are in custody.

B. Felonies

As indicated, felonies are assigned to individual judges who are able to control their own calendars. On an average day a felony judge will have two or three cases scheduled for trial together with a number of status hearings and frequently a large number of arraignments. The usual procedure is for the judge to ascertain the readiness of all parties on each of the cases set for trial and then to proceed with the cases set for status hearings.

SENTENCING (RULE 32)

Sentencing will be conducted by the judge before whom a plea of guilty was entered or verdict or a finding of guilty reached.

The most important aspect of sentencing is the presentence report which is prepared at the judge's request by representatives of the Probation Department. That report will contain any prior criminal record as well as a social and employment history and will conclude with a recommendation as to sentencing. While the court is not obligated to disclose the contents of the presentence report to defense counsel prior to sentencing, Rule 32, Federal Rules of Criminal Procedure; United States v. Dockery, ___ U.S. App. D.C. ___, 447 F. 2d 1178 (1971), most judges will allow inspection by the defense upon request. The rules require, however, that any material disclosed to the defense shall also be disclosed to the prosecutor.

Prior to imposing sentence, the court will afford counsel and the defendant an opportunity to speak. Should either counsel or defendant take advantage of this opportunity, the United States is then entitled to allocute as well.

The sentence may take any number of different forms. Probation, for example, may be given pursuant to the Youth Corrections Act (18 U.S.C. 5010 (a)) which allows a conviction to be set aside after successful completion of the probationary period. In the alternative, the judge may sentence the defendant to a period of probation and suspend the imposition of any sentence indefinitely. This means that should the

defendant violate the terms of his probation and this is later brought to the attention of the judge for a Probation Revocation Hearing, he can at that time impose any sentence he could have given at the original time of sentencing. In addition, the judge may impose a period of probation as well as a sentence and suspend execution of the sentence on the condition that the defendant successfully complete the period of probation. In this case, should the defendant subsequently violate the probation, he cannot be confined for a period greater than the time originally imposed by the court.

A sentence imposed on a defendant is to run consecutively to another sentence imposed on a defendant unless the sentencing judge specifically notes that it is to be served concurrently. Counsel should make a special note to request that any sentence imposed run concurrent to any other sentence. The sentencing judge, instead of imposing a period of strict imprisonment, may alternatively order the defendant to be imprisoned and placed on Work Release during the time of his confinement. It is also possible for the judge to impose a split sentence, i.e., a certain period of time to be served in prison to be followed by a second period on probation.

MOTIONS FOR NEW TRIAL

Rule 33 requires that motions for a new trial, on grounds other than newly discovered evidence, must be made within seven days after the verdict or finding of guilty. A request for an extension of time within which to file this motion must be made within the first seven days subsequent to the verdict or finding of guilty. Motions based on newly discovered evidence may be made within two years of final judgement.

APPEAL

When a defendant is convicted following trial, or when there may be error connected with the sentencing process, counsel should carefully explain to his client the latter's right to appeal. If the defendant does not wish to appeal, it is advisable to obtain a signed statement expressly waiving this right.

If an appeal is to be taken, it is the duty of trial counsel to file eight copies of a notice of appeal with the Criminal Clerk of the Superior Court within ten days of the entry of the judgment. Rule 4, D.C.C.A. Rules. A sample notice of appeal appears in the Appendix

of Forms to the D.C.C.A. Rules. Counsel must also designate at the time he files the notice of appeal, what portions of the transcript are necessary. Rule 23, D.C.C.A. Rules.

For release pending appeal, see D.C. Code § 23-1325 and Rule 9, D.C.C.A. Rules.

PUBLIC DEFENDER SERVICE ASSISTANCE

The Public Defender Service has available at its offices, 601 Indiana Avenue, N.W. (telephone 628-1200), a substantial library of criminal law materials, sample motions and briefs, slip opinions and scientific treatises which appointed counsel may use during office hours (Monday - Friday, 9:00 a.m. to 5:30 p.m.). We also furnish investigative services and assistance in rehabilitative programs through the staffs of our Investigative Division and the Offender Rehabilitation Division. Finally, an attorney is available daily during office hours to consult with counsel concerning their cases.

APPENDIX B

Fact Investigation

FACT INVESTIGATION

I. STANDARD STEPS IN INVESTIGATION

A. Public Records

(1) Inspect the File of the Case

(a) United States District Court. The criminal jacket may be obtained in the File Room (Room 1825-A) adjacent to the Clerk's office. The file may be obtained by filling out a card requiring the defendant's name, case number, your name and the place to which the file is to be taken. In cases where there has only recently been an indictment (within the last week or so), the jacket may be found in the Office of the Criminal Court (Room 1825).

1. The indictment stating the precise charge and the date of the offense.

2. The affidavit of indigency qualifying the defendant for court-appointed counsel.

3. The felony complaint filed with the United States Magistrate stating generally the same information found in the indictment.

4. The Magistrate's papers which will include a record of proceedings (presentments, preliminary hearing, etc.) bail status, names of witnesses testifying at the preliminary hearing, etc.

5. Any arrest or search warrant issued in connection with the case and the affidavit in support thereof.

The following is a checklist of areas of inquiry on initial interview, all of which should have been explored by counsel.[1]

1. Story. Name and address; date of birth; place of birth; complete narrative of events on the date of the alleged crime; prospective witnesses and their names (nicknames),[2] addresses, phones, places they might frequent; employer; relatives; and friends.

2. Arrest and Search. Time; place; people present; activity of defendant at time of arrest; resistance (did defendant give police

---

[1] See footnote 13, p.6.

[2] Frequently, prospective witnesses will only be known to the defendant by their nicknames or descriptions thus making them difficult to locate. In these cases, the investigator may suggest that the defendant accompany him in searching for witnesses in order to facilitate their identification and encourate their participation.

any trouble); warrant for arrest; drinking or narcotics used by the defendant; property seized from defendant's person; place taken after arrested; which precinct where booked; *Mallory* violations; conversation (if any) between police officers and defendant or anyone else present at time of arrest; police brutality (if any); name of informer (if any).

3. Statement to the Police. Time arrested; where taken; who talked to defendant; *Miranda* warnings; police coercion, lies, promises, threats made by police to defendant; what defendant told the police and when; whether statements written or oral.

4. Identification Proceedings. Time, place and people present at any identification proceedings (pictures, lineups); what said or done by whom which might have been suggestive.

5. Insanity. Prior mental history of defendant or close relatives; auditory or visual hallucinations; drug addiction, average dosage per day, length of time on narcotics, type of narcotics used, e.g., heroin, barbituates; vague recollection of events or no recollection at all; irresistible impulse to commit crime, subnormal mentality -- unable to communicate, name three presidents, or do simple mathematics; bizarre type of crime; out of contact with reality; unusual distrust of everyone; inappropriate emotional reaction; type of military discharge (if any); schools attended.

The affidavit is the single most important source of information so examine it thoroughly.[3]

The felony complaint, Magistrate's papers and any warrants and supporting affidavits should be examined in detail for information useful in the investigation. For example, the names of witnesses, arresting officers, times, dates, places, an inventory of property seized, the name of attorney who represented the defendant at the preliminary hearing, etc. should be available.

(b) Superior Court. The criminal jacket may be obtained in the Clerk's Office, Room 104 of Building A (Fifth and E Streets, N.S.).[4] If the

---

[3] If the warrant and supporting affidavit is for some reason unavailable, check with the United States Magistrate's Office and the Criminal Clerk's Office. If the warrant was issued with an address but no name, or if the search was of a premises other than the defendant's, the Criminal Clerk's Office maintains a chronological index of warrants which may be inspected.

[4] In felony cases, the jacket may be either in the Clerk's Office or in the chambers of the individual judge to whom the case is assigned.

offense charged is a felony, the jacket may contain some or all of the same information as may be found in the District Court.

In a misdemeanor prosecution, the jacket will contain an information (instead of a felony complaint) plus any arrest or search warrant issued and supporting affidavit.[5]

(2) Obtain a Copy of the Defendant's Criminal Record

An investigator may obtain a copy of the defendant's criminal record in the Central Records Division, Public Information Counter (Room 2090), in the Municipal Center. A short form (available at the counter and in the Public Defender Service Investigative Section) must be filled out in order to obtain a photostatic copy of the record which is made available at no charge when the defendant is represented by court-appointed counsel.[6]

In completing the record request form, the requesting investigator should indicate the offense charged and the date of the offense in the upper left corner.

(3) Obtain a Copy of the PD-251[7] -- Offense Report

In order to obtain a copy of the PD-251 Offense Report, it is necessary to give the "CCR number"[8] to the appropriate clerk in Room 2090. This report should contain certain basic factual information regarding the offense, the name and address of the complainant and occasionally the name and addresses of witnesses.

---

[5] Not infrequently, a warrant and supporting affidavit will fail to reach the criminal jacket. If in doubt as to the existence of a warrant, check with the Warrant Office, which keeps chronological and alphabetical lists of warrants issued. Preliminary hearings in Superior Court felonies are, of course, conducted in the Superior Court.

[6] Investigators may leave their completed record request forms with the Service messenger who periodically will pick up both records and PD-251's. If this procedure is followed, the requesting investigator should be sure that he signs the record request in order to facilitate its return directly to him. Additionally, the reverse side of the record request *must be signed* by either the requesting attorney, Robert Reed, or Kirby Howlett.

[7] Additional police forms (PD-163, PD-111, etc.) may be obtained by counsel at the time of trial pursuant to the Jencks Act, 18 U.S.C. §3500.

[8] Generally a six digit number prefixed by the letters "CCR" appearing with the information relating to the offense with which the defendant is charged.

Investigators may obtain PD-251's by the use of the Service messenger as described above by noting in the upper right hand corner of the record request form "+251".

(4) Ascertain if Prospective Government Witnesses Have Criminal Convictions

While official copies of MPDC arrest and conviction records of persons other than defendants are available only by consent of the Government or through subpoena, an investigator may assist counsel in establishing the existence of prior convictions. The Clerk's Office in both the District and Superior Court keep alphabetical records of prosecutions. With the assistance of a clerk, an investigator can establish whehter or not a prospective Government witness has a record of convictions. If so, a certified copy of these convictions can be obtained free of charge and may be admissible into evidence.[9]

B. Obtain a Transcript of the Preliminary Hearing

In the vast majority [10] of felony cases, there will have been a preliminary hearing conducted pursuant to Rule 5 of the Federal Rules of Criminal Procedure at which the Government will have been required to establish "probable cause" to hold the defendant for the action of the grand jury. These hearings are conducted before committing magistrates[11] and are recorded. Defense counsel should request a transcript of these proceedings by filing a CJA Form 8 [12] and an investigator should obtain a copy of the transcript of the hearing from defense counsel in order to assist him in his investigation and more specifically, to aid him in interviewing any witnesses whose testimony has been previously recorded.

C. Interview the Arresting Officers

Interview the arresting officers, the names of whom have been

---

[9] See 14 D.C. Code §305 (as amended by the District of Columbia Court Reform and Criminal Procedure Act of 1970).

[10] In a small percentage of cases, the Government will elect to proceed by a grand jury original indictment thus bypassing the preliminary hearing.

[11] In cases involving District Court felonies, the United States Magistrates. In cases involving Superior Court felonies, Superior Court judges serving as committing magistrates.

[12] Public Defender Service attorneys should not use CJA Form 8, but rather should make either or both a telephone call and a written request of the appropriate court reporter or Pro-Typists.

obtained from the PD-251 or the criminal jacket. If the officers are members of a specialized squad such as Robbery, Homicide, etc., they may be located in the squad's office in the Municipal Building. If they are district officers, they must be located at their respective district substation, the number of which may be obtained from the criminal jacket. District officers are most easily contacted when the shift changes at 7:30 A.M., 3:30 P.M. and 11:30 P.M.

D. Interview the Defendant[13]

Assuming that there has been a specific request to interview the defendant, arrangements can be made to see the defendant either in the community or at the District of Columbia Jail. Careful investigation before this interview will enable the investigator to secure a more complete and accurate story from the defendant.

E. Miscellaneous

1. Visit the crime scene and where appropriate, ask the defendant and/or witnesses to show you with particularity the position[14] of the various parties involved.

2. Prepare diagrams and/or take photographs where appropriate. In certain cases, perserving the crime scene is of extreme importance. Due to the fact that the scene may be altered in the months between the offense and trial, well-documented diagrams and photographs may serve not only to assist counsel in preparing his case but additionally may be admitted as evidence at trial.

3. Advise counsel as to any need for an expert. Where investigation has revealed a need for an expert (fingerprints, handwriting, hairs and fibers, ballistics, etc.), the investigators should advise counsel of

---

[13] Defendants should *not* be interviewed as a matter of course in every criminal case,but rather only upon the specific request of defense counsel. In balance, requiring defense counsel to relate to the investigator the defendant's version of the facts avoids putting the investigator in a position where the defendant may offer him a second version of facts or a confession in effect causing counsel and the investigator to work at cross purposes.

Under no circumstances should an investigator interview a defendant without obtaining permission from his lawyer.

[14] Facts relating to distances, obstruction, lighting, etc. will frequently have bearing with respect to the issue of identification while similar factors may be of importance in cases of self defense, accident, etc.

this fact so that counsel may obtain the services of an expert to perform independent tests.

4. Inspect the MPDC complainant files. In appropriate cases [15] the investigator should ascertain whether or not the complainant has made prior similar complaints or whether other [16] may have made complaints against him suggesting a disposition for violence, etc.

F. Street Investigation

The following is a checklist on the information needed in tracing a witness:

1. Full name, alias, nickname
2. Address (last known) and phone
3. Physical description
4. Associates -- past and present, including girl and boy friends
5. Places he is known to frequent
6. Employer
7. Schools, etc.

The witnesses' whereabouts might be found by checking the post office city directory (for address changes), phone company, electric company, or Stone Mercantile Service. If the witness sought is currently within the legal or correctional system the Bail Agency, probation office, parole board, etc., may be able to supply useful information.[17]

II. CHECKLIST FOR INVESTIGATION OF COMMON CRIMES

The following is a discussion of what items should have been covered by the police in investigating the more common crimes. If some items have not been covered, the investigation may be inadequate, and such omissions may be brought out effectively on cross-examination of the police officers.

---

[15] Especially in sex cases where the complainant may have filed other similar charges and crimes of violence where the complainant (or deceased) can be shown to be (have been) a person of violence thus supporting the defendant's claim of self defense.

Prior to attempting to obtain information from the complaint file, see Robert Reed as to the appropriate procedure.

[16] The names of those people who might have previously been victims of the complainant are available through the complainant's prior criminal record, see Section A (4), *supra*.

[17] See *Policies and Practices*, etc., p. 26.

A. Burglary

Defense counsel should ascertain whether the following facts have been covered in any burglary case.

1. Fingerprints. A common place for a burglar to leave his fingerprints is the immediate area of break, i.e., inside a window. Prints also may be found on the door and jamb of closets, dressers, bottles and glasses, walls near light switches, and cash boxes. Occasionally prints may be found on door knobs, furniture, safe tools, and papers and desks.

2. Heel prints. Often papers are strewn on the floor while a burglar is looking for valuables and his footprints will be found on the paper. There may also be mud from the shoes of the burglar on a window sill or inside the house.

3. Glass. Glass particles may be present in the trouser cuffs and pockets of the burglar, if a window was broken in effecting entry. Therefore, samples of broken glass at the scene should always be taken by the police.

4. Paint. If a "jimmy" has been used to force open the window or door, paint may adhere to the tool. Paint samples of the area of break should be taken by the police.

5. Tool marks. Again, if a "jimmy" has been used to gain entry, tool impressions are often left by the burglar. Such impressions should be photographed. If a safe has been broken into, tool marks from a chisel or hammer will be found on the dial.

6. Clothing. Often the burglar may leave an article of his clothing which can be traced through laundry or dry cleaner's mark.

7. Safe Insulation. Samples of safe insulation should be taken by the police for future comparison. Particles of the insulation may be found on the clothing and the shoes of the burglar. A spectrographic analysis may be in order.

B. Robbery

1. Preliminaries. The proprietor of the establishment robbed or individual robbed should be instructed by the police when the crime is reported to detain all witnesses until the police arrive. Each witness should be interviewed separately so as to get independent observations rather than a consensus of opinion. Further, witnesses should be taken to police headquarters to look at police photographs to see whether they can identify the participants or in the alternative, shown pictures at the scene.

2. Fingerprints. Fingerprints are sometimes left on papers, checks, and currency although they "take" best on hard, smooth surfaces

such as metal and glass. An excellent source of fingerprints is the getaway car if there is one. Prints may be found on the rear view mirror, the front door, and side windows.

3. Getaway car. The make and model of the car used to escape should be ascertained.

4. Weapon . The type of weapon used should be determined and an examination for fingerprints made if it has been recovered.

C. Truck Robbery

1. Fingerprints. If a truck is highjacked, fingerprints of of culprits may be found on the rear view and side mirrors, the windows, the cab door ledges, the handle areas, the side and rear doors, and the areas adjacent to the sills of the cab doors.

2. Soil on the foot petals. Samples of the dirt on the truck's foot pedals should be taken by the police for possible matching of the dirt on the suspect's shoes.

3. Used match booklets. A search should be made by the police in the abandoned highjacked truck. These match booklets may be traced.

4. Heel or footprints. Torn cartons frequently will be found in the back of the truck. The felons may have stepped on the cartons, leaving prints.

D. Pickpocket and Purse Snatch

1. Time and place of theft. If the time and place of the theft are not known, then the time and place when the stolen property was last seen and the time and place when the stolen property was last seen and the time and place when the theft was discovered should be ascertained.

2. Type of property taken and its value.

3. Identification of felon. A description of the felon should be obtained. The victim and other eyewitnesses should be given an opportunity to look at groups of police photographs, but no photographs of individual suspects.

E. Unauthorized Use of a Motor Vehicle

1. Time and place of theft. If the time and place of the theft are unknown, then it should be ascertained when and where the car was last seen and the theft discovered.

2. Car in accident. Occasionally, the owner of a car will give a false report of an automobile theft in order to cover up his involve-

ment in an accident. Hit and run accidents occurring shortly before the theft was reported should be checked in the precincts, and the Statistics Bureau of the Police Department in the Municipal Center.

3. Fingerprints on the car. Prints of the culprit may be found on the rear view mirror, the windows, the front door and handles.

F. Grand Larceny

1. Date and time of theft.

2. Complete list of property missing.

3. Location of property immediately prior to theft.

4. Identity of the person who first discovered the loss and how the loss came to his attention and whether he was the logical person to make the discovery.

5. Other possible suspects. A list of persons who knew the existence or location of the property, and/or had access to it should be drawn up, and their movements before and after the theft ascertained.

6. Value of property taken. To be grand larceny the amount lost in the theft must have a value of $100 or more.

G. Rape or Carnal Knowledge

1. Medical examination of victim. It is the policy of the Sex Squad in the Metropolitan Police Department to require every alleged rape victim to submit to a medical examination.

(a) General physical appearance and demeanor of the female;
(b) Presence or absence of marks of violence on the body; their character and position where present, e.g. bruises on stomach, thighs and face;
(c) Presence or absence of marks upon clothing indicating a struggle;
(d) Condition of external female sex organs with respect to bruising and bleeding, e.g., abrasions from assailant's fingernails;
(e) Semen stains on clothing;
(f) Fingernail scrapings for traces of blood, hair, human tissue and fibers which may have been acquired while resisting assailant;
(g) Vaginal smears -- one around the area of the vagina, and another in the area of the urethra;
(h) Comparison of hairs.

2. Medical examination of suspect.

(a) Examination of recent sexual activity.
(b) Examination of clothing.

3. Character of victim. Age, employment, marital status, family, reputation for chastity, prior sexual activity and prior history of sex complaints.

4. Relation of victim to accused. Previously acquainted, how long, how often they saw each other, sex relations of a voluntary nature.

5. Time of offense and time offense reported. If there is a time lag -- why.

6. Exact location of offense. Canvas neighborhood to determine whether anyone heard screams.

7. Victim's mental history.

H. Forgery

1. Handwriting analysis. Comparison with signature on forged document. Often, this is the only evidence of guilt in a forgery case.

2. Fingerprints on forged document.

I. Narcotics

1. Name of informer(if any).

2. Chemist's report. Whether substance possessed and used or sold is a narcotic.

3. Apparatus. Hypodermic needles, medicine droppers, and bent spoons.

4. Place and date and time of sale or possession.

J. Physical Violence -- ADW, Homicide

1. Autopsy report (if homicide).

2. Name of deceased. Age, weight, height, physical build, blood ethanol level, etc.

3. Name of defendant. Age, weight, height, and physical build.

4. Place, date and time of violence.

5. Weapon (if any).

6. Time of death of deceased.

7. Blood of deceased on the defendant's clothing at the time of arrest.

(a) Stain -- blood?

(b) Blood -- human or animal?
(c) Same group or sub-group as blood of deceased?

8. Blood of defendant on deceased's clothing.

9. Blood around area where the deceased was found. If there are severe stab wounds one would expect a great deal of blood around the area where the deceased was found. Otherwise, the body probably has been moved.

10. Hairs and fibers on the deceased from the assailant.

11. Heel and footprints at the scene of the crime.

12. Deceased's clothing. Marks and holes in clothing indicate the manner of death.

13. Photographs of body. The Homicide Squad always takes pictures on arriving at the scene. Medical Examiner's Office will take pictures in connection with autopsy.

APPENDIX C

Policies and Practices in Regard to Investigation of Criminal and Juvenile Cases

INTRODUCTORY NOTE

It is the policy of the Public Defender Service to investigate every case in which the facts are in dispute. This necessarily involves extensive contact with people in the community, both those who will eventually be Government witnesses and witnesses for the defense. The same ethical obligations which guide an attorney's conduct in preparing a case also guide the investigator.[1] The following directives are based on the principal guides to ethical attorney conduct[2] and the practical experience of students and staff investigators at the Public Defender Service over a period of years. The situations outlined here are , we believe, the major potentially troubling ones which you will encounter as an investigator.

IDENTIFICATION

I. In Person. In approaching a witness:

(1) Show him your PDS Identification Card and allow the witness to examine it if he wishes.

(2) State to the witness your name, the name of the PDS attorney for whom you are working, the name of the client and a brief description of the events which you wish to discuss.

(3) Leave with the witness at the conclusion of the interview a business card with your name and the name of the PDS counsel assigned to the case.

II. By Telephone. In preparing to interview prospective witnesses, you will frequently be faced with the option of contacting the witness by telephone in order to arrange a convenient time and place for an interview.[3]

---

[1] The supervising attorney is clearly responsible for the conduct of his investigator: "A lawyer shall not . . . circumvent a disciplinary rule through actions of another." DR-1-102(A)(2), *Code of Professional Responsibility*.

[2] *Code of Professional Responsibility and Canons of Judicial Ethics* (American Bar Association), *Opinions on Professional Ethics* (American Bar Association), *The Prosecution Function and the Defense Function* (American Bar Association Project on Standards for Criminal Justice), *Drinker Legal Ethics* (Columbia University Press, 1973).

[3] This is especially important in the case of police officers and where a witness is employed in meeting the public (e.g., bank tellers, retail sales personnel, cashiers), for the nature of his employment effectively precludes his being interviewed during the business day.

In every case, you should properly identify yourself.[4] A proper telephone identification should include:

(1) Your name and the fact that you are a student investigator.

(2) PDS attorney's name and the name of his client.

(3) Brief description of the events which you wish to discuss.

Example. My name is _____ and I am a student investigator working for Attorney _____ of the Public Defender Service who has been appointed by the court to represent _____. As you may know, Mr. _____ is charged with [facts of the offense] and I would like to speak with you about the case.

ACCESS TO WITNESSES

Gregory v. *United States*

There is substantial support for the proposition that the Government, whether by the prosecutor or police, may not advise a witness not to speak with defense counsel or his representative.[5] Therefore any statement by a witness indicating that he has been advised not to talk with defense representatives or advised to speak with them only in the prosecutor's presence should be reported to the supervising attorney immediately.

You should try to establish exactly the circumstances which have led to the refusal to talk to the representatives of the defense.

(1) Exactly what was said?
(2) By whom?
(3) When?
(4) Where?
(5) Under what circumstances?

---

[4] It is the absolute policy of the Public Defender Service for investigators to identify themselves prior to conducting any form of interview.

[5] A prosecutor should not obstruct communication between prospective witnesses and defense counsel. It is unprofessional conduct to advise any person to decline to give information to the defense. Section 3.1(c) of the Prosecution Function, *The Prosecution and the Defense Function* at p. 76.

If such circumstances should arise, you should initially attempt to reason with the witness by citing the principles set forth in *Gregory* v. *United States:*[6]

(1) That a criminal trial is a quest for the truth and that all you are seeking is an opportunity to learn the truth.

(2) That the witness, if subpoenaed, is subpoenaed by order of the court and that therefore a witness is not the property of either the prosecution or the defense. You should not, however, ever be rude to a witness, suggest that his conduct is unethical, or intimate that he *must* speak with you.

By the same token, a lawyer should not obstruct communication between prospective witnesses and the prosecutor. It is unprofessional conduct to advise a person other than a client, to refuse to give information to the prosecutor or counsel for co-defendants.[7] Accordingly, under no circumstances should you advise any witness to refuse to speak with police, prosecutors or other counsel.

---

[6] "A criminal trial, like its civil counterpart, is a quest for truth. That quest will more often be successful if both sides have an equal opportunity to interview the persons who have information from which the truth may be determined. The current tendency in the criminal law is in the direction of discovery of the facts before trial and elimination of surprise."

* * *

"Witnesses, particularly eyewitnesses, to a crime are the property of neither the prosecution nor the defense. Both sides have an equal right, and should have an equal opportunity, to interview them. Here the defendant was denied that opportunity which, not only the statute, but elemental fairness and due process required that he have . . ."

* * *

"[W]e know of nothing in the law which gives the prosecutor the right to interfere with the preparation of the defense by effectively denying defense counsel access to the witnesses except in his presence. Presumably, the prosecutor, in interviewing the witnesses, was unencumbered by the presence of defense counsel, and there seems to be no reason why defense counsel should not have an equal opportunity to determine, through interviews with the witnesses, what they know about the case and what they will testify to." 125 U.S. App.D.C.140.143, 369 F.2d 185, 189 (1966).

See also *Lewis* v. *Court of Common Pleas*, 260 A.2d 184, 188 (1970).

[7] See Section 4.3(c) of the Defense Function, *The Prosecution Function and the Defense Function* at pp. 229-231.

WHERE GOVERNMENT WITNESS APPEARS RELUCTANT TO PROSECUTE

Occasions will arise when a Government witness will indicate a reluctance to prosecute. This reluctance may take one or more of the following forms:

(1) The witness is primarily interested in the return of his property (restitution) and not in prosecution.

(2) The witness is "tired" of coming to court due to proracted litigation necessitating frequent court appearances. This is especially common where a witness has had to miss several days of work jeopardizing his job status and/or has had to suffer through numerous continuances.

(3) The witness states that he is "scared" due to express or implied threats concerning his testimony.

If you encounter a witness who expresses reservations about testifying in court, you should *not* discuss with him the subject of testifying. You should, if possible, continue with your interview of the witness. If pressed, respond, "You should ask these questions of the prosecutor" or "This is a matter for you and the court."

Under no circumstances should an investigator indicate a discussion with a Government witness which may induce him not to appear. It is proper, however, to inquire of a witness whether he has been subpoenaed. You should report to the attorney, as exactly as possible, the form of words in which the witness expressed his reluctance.

SELF-INCRIMINATION OF WITNESSES

You may encounter a prospective witness whose statement might incriminate him. In this situation the only available authority on the subject concludes "that the interest of the defendant seeking the statement must govern his attorney and investigators, provided that the witness is not misled or deceived."[8]

Where the possibility of a witness' self-incrimination is apparent *prior* to the interview, you should discuss the possible course of the interview with your supervising attorney. He will determine whether you should

---

[8]See text and commentary in Section 4.3 of the Defense Function at pp. 228-230 and Section 3.2(b) of the Prosecution Function at p.82 of *The Prosecution Function and the Defense Function*.

discuss the possible course of the interview with your supervising attorney. He will determine whether you should warn the witness, and what questions should be asked.[9] If, however, during the course of a witness interview the possibility of self-incrimination unexpectedly arises, you should continue the interview.

When during the course of an interview, the witness asks the investigator if anything he says might be used against him, you are obligated to respond, since the witness may not be misled or deceived.[10] A suggested proper response follows:

> I cannot promise you that what you tell me will never be used against you because that decision must be made by the prosecutor.

OBTAINING STATEMENTS

It is essential in conducting fact investigation that the results be properly preserved for possible use in court.[11] The most effective way of assuring the accuracy of witness interviews is to reduce them to writing. There are various procedures[12] by which you may accurately record witness interviews and they are listed in order of preference as follows:

I. Types of Statements

1. Written, Signed Statement. If it is written out by the investigator, it should be read to and by the witness and should contain a concluding sentence indicating that the statement has been read to the witness

---

[9] ABA Standards relating to the Defense Function do not require that the investigator volunteer to a witness an explanation of the self-incrimination privilege. Section 4.3(b) states: "In interviewing a prospective witness it is proper but not mandatory for the lawyer or his investigator to caution the witness concerning possible self-incrimination and his need for counsel.

[10] See Commentary to Section 4.2(b) of the Defense Function, *The Prosecution Function and the Defense Function* at pp. 229-230.

[11] Original interview notes should *always* be preserved notwithstanding subsequent interviews, reduction of notes to narrative form, etc. Arrange with your supervising attorney a procedure by which your notes can be produced if needed.

[12] Approaches to witnesses may vary depending on the type of witness, the place of the interview, the time of the interview, the presence of additional people, etc.

and that its contents are true and correct to the best of his knowledge and belief. If the statement is more than one page, the witness should be asked to sign the last page and to initial the preceding page(s). Additionally, if in reading the statement the witness desires to make any corrections, he should be encouraged to do so in his own hand and should be requested to initial the changes.

2. Written, Unsigned but Ratified Statement. If a witness refuses to sign a statement, it should nevertheless be read to him and by him and he should be requested to make any corrections himself and initial them. If corrections are made and initialed, an unsigned statement may be said to be implicitly approved even though it is not signed.

3. Written, Unsigned but Acknowledged Statement. If a witness refuses to read (and correct) the statement, the investigator should nevertheless read it to him and ask if it is true and accurately represents the substance of the interview. The fact that the witness acceded to the statement should be made part of the investigator's own report.

4. Written Notes Only. If, due to circumstances, the investigator is unable to obtain a substantially verbatim statement, he should attempt to accurately note in writing key phrases and important facts (height, distance, lighting conditions, time, etc.). Immediately upon conclusion of the interview, the investigator should put in narrative third person form the substance of the interview using his notes of key phrases as a basis.

5. No Written Notes or Statement. If, due to circumstances, the investigator is unable to obtain any verbatim notes during the interview, at its conclusion he should immediately reduce to writing his recollection of the interview.

II. Form of Statements

1. Only the statement itself, the date of the interview, the place of the interview and the identify of the interviewer should appear on the statement.

2. If the statement is being prepared for the witness' signature, it should be in the first person singular.

3. The statement should be written as nearly as possible, in the exact words of the witness. Corrections for the sake of simplicity, grammatical accuracy, etc. should not be made.

4. If a witness signs or otherwise acknowledges the accuracy of the facts stated in a written statement, a copy of the statement should be furnished for the witness at his request.[13]

---

[13] See Commentary to Section 4.3(c) of The Defense Function, *The Prosecution Function and the Defense Function* at pp. 230-231.

III. Use of Witness Interviews

Witness interviews, whether resulting in signed statements or third person narratives may be used for one or more purposes.

In Court

1. Impeachment. If, during the course of his testimony, a witness states facts at variance to those related in an earlier statement or interview, defense counsel may use a previously obtained statement or the substance of a previous interview to impeach the witness. Simply stated, impeachment is initiated by questioning the witness regarding the variance and completed by getting him to acknowledge the fact that he gave prior inconsistent information or by calling the investigator as a witness to testify regarding the substance of the interview.[14] Impeachment may take two forms:

(a) Direct impeachment. Where the witness had previously stated a contrary fact.

(b) Impeachment by omission. Where the witness had previously omitted a significant fact to which he subsequently testified.

Evidence of impeachment is admissible solely as to the credibility of the witness and *not* for the truth or falsity of the facts stated. Except in cases of surprise,[15] defense counsel's attempts at impeachment will involve Government witnesses only.

2. Refreshing recollection. If a witness is unable to recall certain events, he may be asked to refresh his recollection by reading his prior statement. This may occur either:

(a) Out of court. Where the witness is asked to read to himself the statement in order to refresh his memory as to certain facts.

(b) In court. Where the witness is asked to read to himself the statement in order to refresh his memory as to certain facts.

Generally speaking, defense counsel will seek to refresh the recollection of defense witnesses only.

3. Past recollection recorded. If a witness testifies that he is unable to recall certain events and if attempts at refreshing his recollection under no. 2 *supra*, fail, the prior statement may be admitted into evidence and the facts therein may be considered by the jury as bearing on the substantive issues involved. In order to qualify for admission as past recollection recorded:

---

[14] After being properly authenticated, the written statement itself may be admitted into evidence.

[15] See 14 D.C. Code, Section 102. For a further explanation of this procedure, see your supervising attorney.

(a) The witness' recollection must be shown to be exhausted.

(b) The proferred statement must be authenticated and must have resulted from an interview proximate to the events in question.

(c) The witness must recall giving the statement and must state that if he gave such a statement its contents must be true.

Generally speaking, problems involving past recollection recorded arise infrequently and defense counsel will seek admission of such statements only with respect to defense witnesses.

PROCEDURE IN DRAFTING, FILING, AND SERVING SUBPOENAS AND PAYMENT OF WITNESSES IN THE UNITED STATES DISTRICT COURT AND SUPERIOR COURT

I. What is a Subpoena?

The ordinary process by which the attendance of witnesses in court is required is the subpoena. To require attendance before a court or at the trial of an issue therein, the subpoena is issued by the clerk. In a criminal case, one accused of a crime has a constitutional right to have compulsory process to procure the attendance of witnesses, that is to say, a right to the issuance of subpoenas.

II. Types of Subpoenas

There are two types of subpoenas with which you will come into contact: (1) subpoena to testify and (2) subpoena duces tecum.

A. Subpoena to Testify

A subpoena to testify is a process to cause a witness to appear and give testimony, commanding him to lay aside all pretenses and excuses, and appear before a court or magistrate therein named at a time therein mentioned to testify for the party named under a penalty therein mentioned. Generally speaking, all persons within the jurisdiction of a court before which cause is to be tried may be compelled to attend as witnesses therein through the means of duly issued subpoenas.

B. Subpoena Duces Tecum

A subpoena duces tecum is a process by which a court commands a witness who has in his possession or control some document or paper that

is pertinent to the issues of a pending case, to produce it at trial. A person served with a subpoena duces tecum is bound to produce the document or documents called for unless he has a reasonable excuse for withholding it or them. The sufficiency of the excuse is a matter for determination by the court. A witness cannot excuse disobedience to the subpoena on the ground that the evidence called for is irrelevant, or that it would be inconvenient to produce the documents and compliance would entail great expense.

Where a subpoena duces tecum is issued without a previous judicial determination of the sufficiency of the application or affidavit, the court has inherent power to entertain a motion to quash the writ, and on such motion it may determine the question, or whether the documents in question are such that the witness is bound to produce them. Court rules sometimes provide for a motion to quash the subpoena because unreasonable or oppressive.

III. Issuance of Subpoena -- United States District Court

In order to subpoena a person to testify or a person to appear and produce a document or object, both a motion for issuance of the subpoena and the physical subpoena must be prepared and filed. All subpoenas should be prepared in triplicate. Subpoenas are available in the Clerk's Office of the United States District Court, Room 1825, from 9 a.m. to 4 p.m. daily.

The motion for issuance of subpoena requires the name of the person directed to appear and testify or directed to appear with the requisite document or object. The motion for issuance of subpoena should be taken to the judge upon whose individual calendar the case has been placed. When this motion has been signed it should be filed in the Clerk's Office (Room 1825) where the original will be filed and a certified copy will be issued to counsel for filing with the cashier in the Marshal's Office (Room 1403). *The subpoena should be time stamped.*

The subpoena to testify must direct the witness to appear in a particular courtroom or the witness room at a designated time and date. The subpoena to produce a document or object must direct a particular person or his authorized representative to appear at a particular time and place and to bring with him a specific document(s) or object(s). Neither the subpoena to testify nor the subpoena duces tecum need be signed by the judicial officer who approves the motion. After the motion for issuance of the subpoena is filed, the clerk will stamp the subpoenas "in forma pauperis". In order for the marshal to deliver a subpoena at court expense, he must have the certified copy of the motion to issue the subpoena and two copies of the subpoena with the "in forma pauperis" stamp. In addition, you must have completed the form "U.S. Marshals Service Instruction and Process Record." One copy of this is given to you as a receipt upon filing, and another copy is sent as a notice of service to

the attorney after service has been completed by the marshals.

IV. Issuance of Subpoena -- Superior Court -- Criminal Division

In the Criminal Division of the Superior Court, there is no motion for issuance of subpoena and thus no need for approval from a judicial officer. There is also only one type of subpoena -- Criminal Subpoena (Form C-30). This one form is used for both subpoenas to testify and subpoenas duces tecum. Subpoenas are available in the Warrant Office of Superior Court, Building A, Room 104, from 9 a.m. to 4 p.m. daily. All subpoenas should be prepared in triplicate.

In order to convert the subpoena to a duces tecum, the words "and bring with you" are added to the subpoena after "as a witness for the defense."

If the marshals are to serve the subpoena, two copies of the subpoena should be taken to the Warrant Office (Room 104 of Building A) where the clerk there will automatically send the subpoena to the Marshal's Office.

V. Issuance of Subpoena -- Superior Court -- Family Division -- Juvenile Branch

In the Juvenile Branch of the Superior Court, there is no motion for issuance of subpoena and thus no need for approval from a judicial officer. There are separate forms for subpoena to testify and subpoena duces tecum. The forms are carbons so that you need only fill one out. Subpoenas are available in the Summons Office of Superior Court, Building C, Room 111 (Mr. Allen) from 9 a.m. to 4:30 p.m. daily.

The forms must be taken to the Summons Office (Room 111 of Building C) for the Deputy Clerk's signature. If the marshals are to serve the subpoena, a copy will be mailed to the attorney after service has been completed by the marshals.

VI. Witness Payment

In order to have a witness paid in any court, they must have been subpoenaed to the court in a specific case.

A. United States District Court

To have a witness paid in District Court, a Witness Attendance Certificate must be obtained from the Assistant United States Attorney assigned to the specific case. The United States Attorney will sign the form indicating how many days the witness spent in court. A witness is paid for each day spent in court whether or not he is actually called to testify. The witness takes the signed form to the Marshal's Office (Room

1403) and will be paid at the rate of $20 per day. If the witness lives in the District of Columbia, he will not receive cash, but will have the money mailed to his address. If the witness lives outside the District of Columbia, he can receive payment on the spot.

B. Superior Court -- Criminal Division

To have a witness paid in Superior Court -- Criminal Division, a Voucher for Witness Fee must be completed by the witness. The witness and defense attorney both should sign the form on the day of trial in the clerk's presence -- Financial Clerk, Room 112 of Building A. The witness will be paid $20 per day in cash. A witness is paid for each day spent in court whether or not he is actually called to testify. If the attorney is not present to sign the form with the witness in front of the clerk, the witness can go to the Criminal Justice Act Office, Room 306 of Building A, and they will verify the form.

C. Superior Court -- Family Division -- Juvenile Branch

To have a witness paid in the Juvenile Branch of Superior Court, an Affidavit for Payment of Witness Fees must be completed by the witness. Both the witness and the defense attorney sign the form and leave it at the Clerk's Office, Room 144 of Building C. The money will be mailed to the witness. The witness will be paid $20 for each day spent in court.

VII. Practical Suggestions

1. SPECIFICITY is very important when making out a subpoena duces tecum. Be as specific as you can in identifying exactly what you want.

2. When serving subpoenas in person, the best way to get what you want is to go out of your way to be NICE. Developing a good relationship with the person you must contact can be invaluable in getting what you need now, and especially in the future.

3. Make sure all of the subpoenas are PROPERLY STAMPED and SIGNED.

4. Where a witness may or may not be called to testify, and even if called -- for only a short time -- and he is unhappy about having to spend a lot of time waiting at the courthouse, PUT THE WITNESS ON CALL. Find out how much time the witness needs to have in order to get to the court and tell him that you will call him one hour ahead of when he is needed. This may be especially helpful in the case of doctors and other professional people.

5. When serving subpoenas in person, have the subpoenas made up in TRIPLICATE: give one original copy to the witness; put one copy in your attorney's file; and keep one copy for yourself which you should HAVE THE WITNESS SIGN as your proof that you made service.

6. HOSPITAL RECORDS: When dealing with St. Eliazabeths Hospital, they will deliver. Call Mrs. Angel at 574-7271. She is the Head of

Records and very helpful. D.C. General will not deliver. But see Mrs. Abel in the Registrar's Office.

7. JAIL RECORDS: To get D.C. Jail records, go to the guard tower in the rear of the Jail and go through that entrance. There is usually no problem in getting the records. To get Lorton records, *call beforehand*. Call 768-9200 and ask for the Main Complex or the Warden's Office. If you want medical records, call 768-9200 and ask for Medical Records.

8. COMMUNICATIONS: When you want to get a transcript of the radio communications in a case, be as specific as you can. You must have the Docket Number. Allow about two weeks for delivery.

9. Subpoenas in District Court which are directed to the Chief of Police (Jerry V. Wilson) or his authorized representative should be made returnable to the Police Liaison Office in the District Court.

10. WITNESS PAYMENT NOTE: No witness payment fee is paid to an employee of the United States or any agency thereof or of the District of Columbia.

INVESTIGATIVE RESOURCES

I. Street Maps

Topographical street maps of the Districtwhich include details of buildings can be obtained from the Printing Office of the D.C. Department of Highways (737-3653), 613 G Street, N.W., Room 1101. The map number of the particular area that you are interested in may be located from an index map in the investigators' office. It takes approximately an hour for them to obtain the copies and they must be paid for with a credit card which Mr. Reed has in the Investigative Division.

The maps can be blown up for display purposes at the Photostat Office for the District of Columbia (629-5232), District Building, Room B-1. This also can be paid for with the credit card. The size of the displays produced are limited, but Joseph Hulse, Inc. (628-6654), 814 Thirteenth Street, N.W., can be used for obtaining blowups of any size.

II. Street Light Information

Information on the street lighting at any given address can be obtained from the D.C. Department of Highways, Street Lighting Division, Room 503, 412 Twelfth Street, N.W. The information available includes the type of lighting (e.g., sodium vapor, mercury vapor, incandescent) at a given address, and the last time the light was changed. Bob DeBeer in the Investigative Division has the forms for obtaining this information.

III. Weather Information

Information on the weather at any given time on any date may be obtained from the National Weather Service Office (557-2468) at National Airport. Certified copies of the report, which include information on the weather conditions by hour, precipitation by hour, cloud cover, sunrise, sunset and moon phase are available. There is no charge to government agencies and the reports can be mailed to the attorney.

IV. Resources for Locating Witnesses

The City Directory[16] is an alphabetical listing of all persons in the District of Columbia with their address, phone number and occupation. The most recent Washington Directory was compiled in 1970, and is obviously of limited value in locating highly mobile persons. There are also directories for the surrounding suburbs.

The Haines Criss Cross Addressokey[17] is a listing of all addresses in the District of Columbia. It is indexed alphabetically by street name and then numerically by address. It contains the occupant's name, address and phone number at each residence. It is often valuable in contacting neighbors of persons who have moved and left no forwarding address.

The Haines Criss Cross Telokey[18] is a listing of all the phone numbers in the District of Columbia and surrounding area. It is indexed numerically by telephone number and contains the name and address of the person to whom the phone is assigned.

The Central Records Section of the D.C. Jail (546-3459) will provide upon request information on whether a person is being held in custody in the D.C. Jail, Lorton Penitentiary or Lorton Reformatory. The Records Section does not have information on halfway houses. Generally the Records Section requires the name and birth date of the individual.

The D.C. Department of Motor Vehicles, Licenses and Registrations Divisions, Room 1157 of the Municipal Building can provide a variety of information. There is a computer print-out book on the counter of that office which has an alphabetical listing of all persons who have cars registered in their names in the District of Columbia. There is also a numerical listing of all license plates and who they are issued to. From either the tag number or the name of the person, the title may be obtained which provides information on when the car was purchased, who it was purchased from, what the financing arrangements were, etc.

---

[16] Located in the Investigative Division on the Sixth Floor, 601 Indiana Avenue, N.W.

[17] Id.

[18] Id.

The D.C. Department of Motor Vehicles, Drivers Permit Division, Room 1044, in the Municipal Building, has an alphabetical listing of all persons with drivers permits. From this index, the driver permit may be obtained which contains a description of the individual including height, weight, eye and hair color, and age, as well as social security number, current address, and photograph.

The Bureau of Vital Records Section of the Department of Human Resources, Room 1028 of the Municipal Building, maintains files of all birth and death certificates issued in the District of Columbia. Death certificates are kept alphabetically by the name of the deceased, and by year. They contain the name of the deceased, physical description, date of birth, residence, place of death, occupation, relatives and cause of death. The index of birth certificates is kep alphabetically by the name of the father and by year. It contains the name, address and occupation of both the mother and the father.

The Bail Agency (727-2924), 601 Indiana Avenue, N.W. maintains an alphabetical file of all persons currently on bail. They can provide a current address for anyone presently out on bail. For common names it is useful to provide additional information on the individual such as date of birth, charge, etc., but it is not essential.

The Central Records Division of the Metropolitan Police Department maintains a complete file of 251 reports. There are indexes to the file both by CCR number, which can be obtained from the defendant's arrest record, and alphabetically by the complainant's name. There is no index by date of offense, but CCR numbers are issued sequentially.

The Marriage Bureau for the District of Columbia, 601 Indiana Avenue, N.W., maintains files alphabetically by name of the groom and maiden name of the bride. From this index the Marriage License may be obtained which contains various information including the parents of the bride and groom and their addresses.

The Recorder of Deeds for the District of Columbia, 6th and D Streets, N.W., can provide a current address for the owner of any given property. This is frequently useful when trying to locate persons who lived in now-abandoned buildings.

The Family Services Division of the Social Services Administration for the District of Columbia, 500 First Street, N.W., maintains a file of all persons who are now receiving or have in the past received either welfare payments or emergency assistance. The index is kept alphabetically by the name of the father of the family, or by the mother's name if there is no father. Information on these persons may be obtained by calling the extension which corresponds with the case name. The prefix number is 629:

A-BEZ	6521	G-HAR	6205	N-Z	6204
BI-BRZ	6461	HAS-JAZ	6361	R-SLZ	6517
BU-CLD	6610	JE-KY	6240	SM-THQ	6411
CO-DEZ	6505	L-MAZ	6207	THR-WAZ	6233
DI-FZ	5203	MC-MYZ	6206	WI-Z	6491

The Post Office maintains a central file of all forwarding addresses provided to them. This information may be obtained by visiting the Inquiry Section in the Main Post Office Building at Massachusetts Avenue and North Capitol Street.

V. Resources Not Available

The Unemployment Office for the District of Columbia does not release its records. They are not available to individuals, nor are they available upon subpoena under the agency's authorizing statute, 46 U.S.C. §313f.

An individual's hospital records are usually unavailable unless he specifically authorizes their release. Sometimes a hospital will not allow records to leave the premises unless the release has been executed on a form which the hospital provides. Alternatively, records may be made available only by subpoena.

Stones Mercantile Credit Reference Agency used to provide subscribers with information on individuals which included credit and personal information. In the past year, 15 U.S.C. §1681 was passed which prohibits them from providing any information except in reference to a credit check, employment needs, or in the interest of national security.

The National Personnel Records Center in St. Louis, Missouri has most of the military records for discharged servicemen. They will provide information on defendants and other persons only in response to a subpoena. Further information is available in the Investigative Section.

APPENDIX D

Care and Management of the Deliberating Jury

MEMORANDUM

TO: Staff Attorneys

FROM: William W. Taylor, III

DATE: June 22, 1973

SUBJECT: Care and Management of the Deliberating Jury

Introduction

The thoughts in this memorandum and the legal authorities discussed are not intended as a substitute for on-the-spot judgments about how to handle a jury when it appears to be confused or deadlocked. Hopefully, however, the trial attorney can refer to this memorandum for legal (and moral) support in taking a position calculated to reduce the risk that a hung jury will be unhung in the wrong direction.

In general, the attorney should bear in mind that it is not his job to help unlock a jury. Beware of making suggestions or of agreeing to a particular method of proceeding suggested by the Court or by the prosecutor. You can rarely be hurt in those situations by objecting to any further efforts to bring the jury to a verdict. The strength and vigorousness of the objection may of course be varied depending on your estimate of which way the jury is jung. Judges don't like to declare mistrials, and the chances are they will attempt to bring a jury to a verdict, and take their changes in the Court of Appeals.

Finally, remember that it is a very human situation, where a small number of people are generally disagreeing with a much larger number, and that the psychological realities are that the smaller number will ultimately yield. See Comment, On Instructing Deadlocked Juries, 78 Yale Law Journal 100 (1968) for an interesting mathematical and psychological analysis of jury dynamics.

I. Communications to and from the Jury During Deliberation

A. General

1. Instruction 2.72 in the Redbook. This instruction directs the jury to communicate only through the foreman and only in writing to the Court.

2. Devitt and Blackmer, Federal Jury Practice and Instructions, §5.10 & §17.17.

3. ABA Minimum Standards, Trial by Jury, §5.2, §5.3.

B. Problem Areas

1. The defendant and counsel have a right to be present during all communications by Court to jury.

   a. All authorities cited above

   b. Rule 43, Superior Court Rules of Criminal Procedure

   c. Sixth Amendment

   d. Cases

      (1) Shields v. United States, 273 U.S. 583 (1927)

      Counsel for both sides had agreed that the jury was to be held until they reached a verdict, but the jury sent a note, after counsel departed, to the judge that they had agreed as to some defendants but could not agree as to Shields and two others. The judge replied by note, "The jury will have to find also whether Shields (and the two others) are guilty or not guilty." The Solicitor General did not oppose the petition for certiorari, and the Supreme Court reversed, on the grounds that the judge's action in communicating with the jury without the presence of the defendant and counsel was improper.

      (2) Walker v. United States, 116 U.S. App. D.C. 221, 322 F2d 434 (1963) cert. denied 375 U.S. 976 (1964)

      The jury sent a note asking the judge whether the testimony of a certain witness linked two of the three co-defendants to the offense. The judge replied in the absence of defendants and counsel that the testimony did not link the two co-defendants. The third co-defendant, who was the only one convicted, complained in the Court of Appeals. The Court stated that Rule 43 prohibits any communication with the jury in any way when the defendant is absent. But the Court found, under Rule 52, that there was no prejudice to the defendant's substantial rights, and affirmed. In a strong dissent, Judge Edgerton collected the cases in the area, and argued that the 6th Amendment right to a public trial was at stake, and that the defendant did not need to show prejudice.

      (3) United States v. Wade, 142 U.S. App. D.C. 346, 441 F.2d 1046 (1971)

      Here, the jury went out at 11 a.m. , and the Court recessed, advising counsel to remain "available whenever the jury returns" but said nothing to the defendant. The jury deliberated the rest of the day and part of the next morning with frequent returns to the courtroom for

further instructions, including the Allen charge. The defendant showed up shortly after the verdict was returned, and was committed. The Court of Appeals found that the defendant had not knowingly waived his right to be present during this very critical period and that the standard for appellate review was whether there was a reasonable probability of prejudice.

(4) United States v. Glick, 463 F.2d 491 (2nd Cir. 1972)

The Court held that it was error for the judge, in the absence of the defendant, to instruct the jury that they could recommend leniency, and that the error could not be considered harmless.

(5) United States v. Sam J. Schor, 418 F.2d 26 (2nd Cir. 1969)

A good case and a lengthy opinion relying on Rule 43 and ABA Standard 5.3, but the Court indicates that deprivation of the right to presence are subject to the rule of harmless error under Rule 52. In this case, however, the Court found the error not to be harmless.

e. Exceptions: It appears to be the practice in the District of Columbia to respond to jury requests for tangible evidence without notice to counsel and the defendant. This practice seems to be approved in United States v. Schor, supra, and in Downing v. United States, 348 F.2d 594 (5th Cir.) cert. denied, 382 U.S. 901 (1965), but it is contrary to the ABA Minimum Standards §5.2.

f. Conclusion

The success of appellate review may turn on a timely objection. When in doubt, object. If you learn after the fact, move for a mistrial.

2. Reinstructions

a. General authorities emphasize the judge's discretion in whether or not to respond and what the responses should be.

(1) 2 C.A. Wright, Federal Practice & Procedure, Criminal, §502

(2) Devitt & Blackmer, §5.10

(3) ABA Minimum Standards, §5.3.

b. The discretion may be limited in particular cases. One case in the District of Columbia holds that it is error to refuse to enlighten the jury with a reinstruction as to the critical issue in the case. Wright v. United States, 102 U.S.App.D.C. 42, 250 F.2d 4 (1957). The trial judge refused

to respond to a juror's inquiry as to whether mental illness other than schizophrenia was appropriate for them to consider. Failure to respond to that inquiry was reversible error. Other cases view Wright as a statement of the Court's obligation in appropriate circumstances to reinstruct. See Walsh v. Miehle-Goss-Dexter, Inc., 378 F.2d 409 (3rd Cir. 1967).

c. Avoiding the danger of undue prominence.

Frequently you will want to counteract the prominence given the government's side of the case when the jury requests reinstruction on the elements. One way to do this is to ask the judge to reinstruct on the defenses, if any. Although there is no authority in this jurisdiction requiring the judge to instruct on more than is asked for, it is generally held that the judge may do so, within certain guidelines. This is the position of the ABA Standards and appears to be approved by the courts. It is certainly not error to repeat more than is requested.

Judges can use this fairness principle to benefit the government as well as the defense, however. In Williams v. United States, 131 U.S.App. D.C. 153, 403 F.2d 176 (1968), the jury, in a second degree case, requested further instructions on "the difference between manslaughter and self-defense." The judge re-read the portion of his charge describing the elements of second degree and manslaughter. Appellant argued that the judge's action was not responsive to the request and was obviously designed to move the jury back to a consideration of second degree, when they were debating between manslaughter and acquittal. The Court of Appeals held that the judge might just as well have omitted his charge on second degree, but that to give it was not reversible error.

The 5th Cricuit has held in at least two cases that the Court, in some cases, must go beyond what is requested by the jury in order to avoid undue prominence to the government's version of the case. See Bland v. United States, 299 F.2d 105 (5th Cir. 1962); Perez v. United States, 297 F.2d 12 (5th Cir. 1961).

Finally, there is some hint that if a reinstruction raises new or different principles of law, counsel has the right, if timely asserted, to a limited additional argument. See ABA Standard 5.3, Comment, and an annotation at 15 ALR 2nd 490 (1951) .

3. Reading parts of testimony

This issue raises almost the same problems as the reinstruction issue, although it seems to occur less frequently.

a. The Court has discretion in whether or not to permit particular testimony to be released by the jury.

(1) ABA Minimum Standards, §5.2.

(2) Salzman v. United States, 131 U.S.App.D.C. 393, 405 F.2d 358 (1968)

b. The ABA Standards provide an exception when it would be "unreasonable,' apparently based on sheer logistical factors, rather than prejudice to one side or the other. These standards suggest that if there is a danger of undue prominence to one side or the other, that other testimony may be read as well.

c. Under some circumstances, however, the judge's improper handling of requests for testimony may be reversible error.

(1) United States v. Jackson, 257 F.2d 41 (3rd Cir. 1958). The jury requested information as to whether a narcotics informant was a government employee, and the Court of Appeals felt that it was error not to have his testimony on that subject read back to the jury. But see United States v. Chicarelli, 445 F.2d 1111 (3rd Cir. 1971).

(2) Henry v. United States, 204 F.2d 817 (6th Cir. 1953). After the jury had announced itself unable to agree, the judge read back the testimony of a particular witness who had been severely criticized by the judge and who had been subject to insinuations by the judge that he was lying. This case may go off on the theory that the judge was over reaching to try to break the deadlock, rather than the theory that he improperly handled a request for reinstruction.

(3) United States v. Rabb, 453 F.2d 1012 (3rd Cir. 1971) and United States v. Rabb, 454 F.2d 726 (3rd Cir. 1972). Error for the Court to summarize testimony after denying jury's request to rehear it.

d. See discussion of use of transcripts at p.2, supra.

II. The Dynamite Charge and Other Means of Coercing a Deadlocked Jury

A. General References and Authorities

1. Allen v. United States, 164 U.S. 492, 501 (1896). This is the case that started all the trouble.

2. Instruction 2.91 of the Redbook, Alternatives A and B. Note that although the Comment states that Alternative B may not be given in United States District Court, it does not prohibit the giving of Alternative A in Superior Court.

3. United States v. Thomas, 146 U.S.App. D.C. 101, 449 F.2d 1177 (1971). Adopts the ABA revision of the Allen charge, eliminating references to minorities and majorities, for the D.C.Circuit.

4. Simms v. United States, 276 A.2d 434 (1971). Approves old Allen charge.

5. ABA Standards, §5.4, and Commentary.

6. Comment, On Instructing Deadlocked Juries, 1968, 78 Yale Law Journal 100.

7. Devitt and Bleecker §§17.18, 17.19, 5.11.

B. Objections to the Allen charge

Even though the DCCA has approved the Allen charge in Simms v. United States, supra, counsel should continue to object to it and point to the growing body of highly respectable authority for its abolition.

1. Green v. United States, 309 F.2d 852 (5th Cir. 1962).

2. Thaggard v. United States, 354 F.2d 735, 739-741 (5th Cir. 1965) (concurring opinion), certiorari denied, 383 U.S. 958.

3. Levine v. Headlee, 134 S.E.2d 892, 148 W.Va. 323 (1964).

4. State v. Thomas, 342 P.2d 197, 200, 86 Arizona 161 (1959).

5. State v. Randall, 353 P.2d 1054, 1057-1058, 137 Mont. 534.

6. ABA Standards §5.4.

7. 2 C.A. Wright, Federal Practice & Procedure, Criminal, 502.

C. Even where it is otherwise permitted, the old Allen charge may not be given to the jury before it retires.

1. United States v. Meisch, 370 F.2d 768 (3rd Cir. 1966).

2. Green v. United States, 309 F.2d 852 (5th Cir. 1962).

3. But, the ABA Standards §5.4(b), permit the modified charge to be given both before the jury retires and after it has indicated disagreement.

D. Other Forms of Coercion

It is clear that the judge may not require the jury to deliberate for an unreasonable time or under unreasonable conditions and shall not threaten the jury or otherwise attempt to induce a verdict.

1. See cases cited in the ABA Standards, §5.4(b), Commentary, at p. 147. See also cases cited in 2 C.A. Wright, §502, fn. 26, 27.

2. Williams v. United States, 119 U.S.App.D.C. 190, 338 F.2d 530 (1964). Here the jury asked, through its

foreman, if two jurors could be replaced. The judge returned the jurors to the jury room with a dynamite charge. The Court of Appeals held that under the circumstances, returning the jurors to deliberate was error.

3. Smoot v. United States, ___ U.S.App.D.C.____, 463 F.2d 1221 (1972). Here the Court asked if the jury, which had announced itself to be deadlocked, could agree on a lesser included offense. The Court of Appeals held that that question put the Court on treacherous ground, but that he salvaged himself by asking if they could agree on anything.

4. Goff v. United States, 446 F.2d 623 (10th Cir. 1971). Error to set a time limit.

E. Revelation by the jury of their numerical division is grounds for a mistrial, even when the revelation is accidental.

1. Instruction 2.72 in the Redbook.

2. Brasfield v. United States, 272 U.S. 448 (1926). (Court requested the division, then Allenized the jury.)

3. Cook v. United States, 254 F.2d 871 (5th Cir. 1958).

4. Mullins v. United States, 123 U.S.App.D.C. 29, 356 F.2d 368 (1966). Accidental revelation calls for mistrial. But see United States v. Rao, 394 F.2d 354 (2nd Cir. 1968) cert. denied, 393 U.S. 841, rehearing denied, 393 U.S. 972.

5. United States v. Hayes, 446 F.2d 309 (5th Cir. 1971).

F. Summary

Counsel should object to any action by the trial judge, even without the Allen charge, which creates the risk that the minority of jurors will perceive pressure from the Court to surrender their views. This includes a direction that "you have got to reach a decision in this case," Jenkins v. United States, 380 U.S. 445 (1965), or an instruction that the jury could recommend leniency, United States v. Davidson, 367 F.2d 60 (6th Cir. 1966). There is little to be gained by suggesting alternative procedures to the Court, when the deadlock situation arises, and little to lose by objecting to anything that occurs.

III. Polling

A. General

1. Rule 31(d), Superior Court Rules of Criminal Procedure.

This rule bestows the right to a poll upon either party. The right may be waived unless it is timely asserted. In a multi-count indictment, counsel should request a poll as to each count, rather than a single poll as to the whole verdict.

2. ABA Standards, §5.5.

B. Procedure

There appear to be no standard questions to be asked on the poll, and the practice varies with each judge. In my view, the preferred practice is to ask each juror, "How do you find the Defendant _____ as to Count ___ of the indictment, charging him with _____, guilty or not guilty?"

C. Alternatives When the Poll Reveals Disagreement

1. Rule 31(d) provides that if there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged. It is therefore appropriate to request a mistrial when the poll reveals lack of unanimity, even though the judge has the alternative of directing the jury to retire and redeliberate. The ABA Standards suggest that when the lack of unanimity appears in open court, further deliberations may not be possible without coercing the dissenting juror or jurors, now publicly exposed.

2. In any event, when lack of unanimity appears, the judge may not continue the poll and certainly may not attempt to coerce the dissenting juror(s).

   a. Jones v. United States, 273 A.3d 842 (1971).

   b. Matthews v. United States, 252 A.2d 505 (1969).

      Juror said, "It is conditional." Error to force a yes or no answer.

   c. McCoy v. United States, 139 U.S.App.D.C. 60, 429 F.2d 739 (1970)

      "Yes, with a question mark"; same result as Matthews.

   d. Exception: The judge retains the authority however, to clarify a poll when a juror is obviously confused about the question he is supposed to answer. See Brooks v. United States, 137 U.S.App.D.C. 147, 420 F.2d 1350 (1969) and Williams and Coleman v. United States, 136 U.S.App.D.C. 158, 419 F.2d 740 (1970).

APPENDIX E

The Use of Role-Play as a Training Technique

The Use of Role-Play as a Training Technique

Throughout the practice case, State v. Chismo, we have referred to the use of role-play as a training technique. Here we would like to discuss this technique in some detail, since its effectiveness depends upon the manner in which it is employed by the training director. First we shall describe the technique as it is generally used in training. Then we shall offer some suggestions on adopting it to your training program for new staff attorneys.

Role Play Methodology

The PDS training program makes extensive use of role playing and simulative exercises, particularly in the introduction and practice of new skill areas. In each instance the curriculum describes the objectives of the role play and contains brief role profiles for the "actors." The attorney-trainees who participate in a given role play are not provided "actor" instructions, but are expected to perform a specific task which simulates their future "real world" assignments.

An effective role play must have specific training objectives or outcomes, but since role play situations are, in part, open ended (behaviors are not programmed by a script) the instructor must lead a debriefing which is directed to a set of learning objectives. The following materials are meant to assist the trainer in conducting and debriefing effective role plays.

Role playing is essentially an action, doing technique. It defines a situation which simulates the "real world" and allows trainees to act out a set of appropriate responses. Effective role playing is conducted in a learning context which is (1) spontaneous, in that actors respond freely to the immediate behavior of one another; (2) directed toward learning objectives, as dictated by both the internal and external constraints of the defined role playing situation; and, (3) provisional, or "not for keeps", in the sense that trainees' behavior can be examined

with a minimum of threat, and their approach can be improved through discussion and analysis.

The use of role playing in the training sessions described in this curriculum is particularly valuable because it:

- serves as a bridge between theory and action wherein new attorneys can make an effective transition from intellectual understanding to actual practice of a skill;
- provides a safe learning environment where new behaviors can be tried out without the consequences of failure. Since the person's "role" is being discussed and criticized, rather than his real-life behavior, he is more likely to experiment with new actions;
- yields "concreteness" insofar as it makes actual behavior available for analysis and improvement. It is action-centered and provides the group with a focused, common experience which they can analyze without falling into semantic frays.

How to Set Up, Conduct, and Process Role Playing

To maximize the learning value of role playing the training director needs to attend to a variety of details which have significant impact on the learning to be achieved. The following guidelines are generic to role playing and need to be modified to accommodate certain design variables such as group size, actor requirements, use of video taping, etc.

1. The learning objectives of the role playing should be made clear to all members (both actors and observers) of the training group. Everyone in the group should know why we are doing this.

2. Physical requirements: a seating arrangement that permits all members of training group to clearly view the action. (If video taping equipment is used two options are available: 1) replay after the action has been viewed by both actors and observers, or 2) observer viewing on the monitor simultaneous with the action conducted and taped in a separate room.)

3. Instructions to trainees

a. Brief the actors on their roles and check their understanding of the parameters of the role play situation. Caution them to "stay in role" and not overact à la Perry Mason courtroom scenes. Overacting distorts the behavioral data which will be analyzed.

b. Provide observation guidelines for the trainees which focus on the objectives (skills, use of procedures) of the role playing session. Remind them to take notes on the specific behavior of the actors, e.g., statements and non-verbal actions.

Each role playing situation in this curriculum has a set of role profiles for the actors. Dependent upon the actors' experience with the assigned role and the complexity of the defined role play situation, it is often necessary to orally brief the actors after they have read the role profiles.

4. Conduct of Role Playing: A clear, sharp startup of role play action is necessary to make a conscious transition from the classroom to the "real world." The trainer's instruction at this point should be as focused and precise as a film director who calls for "lights, camera, ACTION."

During the action of role playing the trainer should observe closely and take notes on the actors' behavior which will be analyzed. The trainer should ened the role playing when sufficient behavioral data related to the learning objectives is available. The length of an effective role playing situation is a function of both controlled variables (parameters of defined situation, role profile data, actors' experience) and the free interaction of the role players, and for that reason cannot be determined in advance. The trainer determines an appropriate "STOP" point based on his observation of the actors' in relation to the learning objectives.

5. Debriefing a Role Play: The experience- based learning from a role play is limited, obviously, to the participants in the role play whose actual experience gives them a "feel" for the particular demands of a situation. Since role playing is conducted in a group context, however, it is crucial that the learning be extended to all trainees by a careful debriefing after the role play action is completed.

The first part of the debriefing should focus on the collection of behavioral data which relate to learning objectives. The trainer can facilitate this process by asking trainees and actors to offer observations which are corroborated by evidence (behaviors). Once significant actions have been identified (and perhaps, recorded on a sheet of newsprint) the trainer should assist the group in an analysis. This examination of causes, influences, dynamics, etc. constitutes a critique of performance and should lead to a discussion of alternatives and options.

If the role play action generated data sufficient to the desired outcomes (objectives), then the final part of the debriefing should focus on generalizations. "What is there about this tactic (skill, procedure) which applies in other areas of practice?"

The most important things to remember about debriefing a role play are:

> What was the trainee supposed to learn?
> Did the trainee learn it? How do we know?

The answer to the first question requires that the learning objective be specified ahead of time ("Today we are going to learn how to challenge prosecutorial actions at trial") and the answer to the second and third requires that the participants and trainer be able to identify behaviors which indicate the degree to which the learning objective has been reached.

> Recommendation: *Before each role play session the training officer should write out and distribute to the trainees the objectives and behaviors which will be sought in the session.*

This recommendation is not all that easy to follow. It will require some thinking and discussion by the senior staff for explicit statements of what

constitutes effective procedure to be formulated. Essentially, you are trying to isolate what makes a good lawyer a good lawyer. Some aspects of expertise are ones of style, which cannot be developed in six weeks, but other aspects involve fine points of tactics and preparation and they can and should be made as explicit as possible.

(CUT ALONG THIS LINE)

EXEMPLARY PROJECT DOCUMENTATION

"The D.C. Public Defender Service: Volume II, Training Materials"

To assist LEAA in the preparation of future Exemplary Project Documentation Materials, the reader is requested to answer and return the following questions.

1. What was your purpose in reading this document?

   - ☐ Planning a new defender agency training program
   - ☐ Modifying existing training procedures
   - ☐ Comparing the D.C. program with local training efforts
   - ☐ General information
   - ☐ Other (please specify: _____)

2. Were the materials in this document relevant to your needs?

   ☐ Completely ☐ Partly ☐ Not at all

   Comments:

3. To what extent would you consider the materials useful for:

	Highly Useful	Of Some Use	Not Useful
Direct adaptation to your jurisdiction	☐	☐	☐
Providing a model for the development of similar training systems	☐	☐	☐
Developing a thorough understanding of exemplary defender agency training procedures	☐	☐	☐
Other (please specify: _____)	☐	☐	☐

4. In what ways, if any, could the document be improved:

   A. Content/Coverage

   B. Structure/Organization

   C. Writing Style/Format

5. Please check the ONE item below which best describes your affiliation with law enforcement or criminal justice. If the item checked has an asterisk (*), please also check the related level, i.e. Federal, State, County or local.

Federal	State	County	Local
☐ Headquarters, LEAA		☐ Police *	
☐ LEAA Regional Office		☐ Court *	
☐ State Planning Agency		☐ Correctional Agency *	
☐ Regional SPA Office		☐ Legislative Agency *	
☐ College/University		☐ Other Government Agency *	
☐ Private Firm		☐ Professional Associations *	
☐ Citizen Group		☐ Crime Prevention Group *	
☐ Legal Aid/Public Defender Agency			

6. Your Name (Optional) _____

Organization or Agency _____

Your Position _____

(Fold)

U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
WASHINGTON, D.C. 20530

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

POSTAGE AND FEES PAID
U.S. DEPARTMENT OF JUSTICE
JUS-436

U.S. MAIL

Director
Technology Transfer Division
National Institute of Law Enforcement
and Criminal Justice
U.S. Department of Justice
Washington, D.C. 20530

(Fold)

(CUT ALONG THIS LINE)